



CITY COUNCIL STAFF REPORT

MEETING DATE: May 7, 2003

LEAGUE OF CALIFORNIA CITIES RESOLUTION

RECOMMENDED ACTION(S):

Provide Direction to Designated Voting Member

EXECUTIVE SUMMARY: The League of California Cities has called a special General Assembly on May 15th to consider a resolution relating to the State's Budget Crisis. The Council has previously designated Mayor Kennedy as the City's official voting delegate at this special meeting. Councilmember Chang was designated as the alternate.

Attached is the resolution that will be considered at the Assembly. It calls for the State to place on the ballot a measure to constitutionally protect local government revenues from future raids when the State finds itself in a budgetary crisis. As previously publicly stated by both the Council and City staff on many occasions, the City's own local economy is underperforming and the City is doing its best to live within its means. Any seizure of local revenues by the State government could be disastrous.

Staff recommends supporting the resolution.

FISCAL IMPACT: No budget change is requested at this time.

Agenda Item # 1

Prepared By:

**Assistant to the City
Manager**

Submitted By:

City Manager

A RESOLUTION^a RELATING TO STATE-LOCAL FISCAL RELATIONS AND A STATE BUDGET RECOVERY PLAN

Source: Board of Directors

Recommendation to May 15, 2003 Special Meeting of General Assembly:

WHEREAS, the state of California faces an estimated budget deficit of \$34 billion or more in FY 2002-03 and FY 2003-04 (combined), and in previous state budget crises the state has showed a disturbing willingness to balance its budget by taking traditional local tax revenues that fund vital community services; and

WHEREAS, the current raid of local property tax dollars by the state (ERAF) will cost cities statewide \$779 million in 2002-03, and, after payments to cities from state general fund programs and the Proposition 172 public safety sales tax are deducted, cities will provide \$489 million in net subsidies to the state of California in 2002-03; and

WHEREAS, the Governor's original budget proposal and many of the proposals by caucuses of the Senate and Assembly suggest that local governments make a "contribution" of increased local tax revenue to solving the state budget crisis without imposing any restrictions on the ability of the legislature to raid local tax funds in the future; and

WHEREAS, city officials support state leaders who chart a responsible and balanced course in addressing the state budget crisis and call on the Governor and other state leaders to ensure the state lives within its means and does not rely on vital local financial resources to balance the state budget; and

WHEREAS, it is vital to the health of cities that the state continue to meet its constitutional obligation to adequately fund public education; and

WHEREAS, the state budget recovery plan should include a proposal to the voters to constitutionally shield local general tax revenues that fund public safety, street maintenance, parks and libraries, and other vital services from state raids in the future; now, therefore, be it

RESOLVED, by the General Assembly of the League of California Cities assembled in a Special Meeting in Sacramento, May 15, 2003, that the board of directors may support a state budget recovery plan in accordance with the following principles and guidelines:

Section 1. League Support Conditional Upon Local Revenue Protection. (a) The support of the League of California Cities for any budget recovery plan that relies on increased "contributions" of city revenues or temporary taxes to reduce part of the budget deficit is expressly conditioned upon the submission by the legislature to the voters of a ballot measure at the earliest possible election, amending the state constitution to limit the ability of the legislature to take local government general tax revenues as described in subsection (b).

(b) The proposed constitutional amendment should limit the ability of the state to seize, take, shift, divert or otherwise reduce the property tax, sales tax, VLF (including VLF backfill) and all other locally approved tax revenues of local governments unless: (1) the Governor declares a state fiscal emergency, (2) the legislature approves such action by a supermajority vote; and (3) the measure authorizing the seizure of the local tax funds provides for its reimbursement in the next fiscal year.

^a This is a draft version of the resolution that will be reviewed and approved, as amended, by the board of directors, when it meets the morning of May 14, 2003.

Section 2. Balanced Budget Recovery Plan. Any budget recovery plan should rely significantly on cuts to state general fund (SGF) expenditures while avoiding reliance on local tax revenues to finance the current deficit or future state spending. If the budget recovery plan also relies on the issuance of debt instruments or temporary taxes to finance part of the deficit over a period of years, strict limitations should be imposed on state general fund spending; provided, however, the state should give high priority to public safety programs. The voters should be asked to approve a prudent general fund reserve requirement.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 7, 2003

APPOINTMENTS TO THE PERCHLORATE CITIZENS ADVISORY GROUP

RECOMMENDED ACTION:

Approve the Mayor's Appointment to the Perchlorate Citizen Advisory Group

Agenda Item # 2

Prepared By:

**Council Services &
Records Manager/
City Clerk**

Submitted By:

City Manager

EXECUTIVE SUMMARY:

The Regional Water Quality Board has endorsed the formation of a Citizens Advisory Group to review perchlorate clean up issues and public information efforts. The perchlorate Citizens Advisory Group will be chaired by Sylvia Hamilton of San Martin. Morgan Hill has been asked to appoint two members to serve on the Citizens Advisory Group. Mayor Kennedy is suggesting the appointment of himself and Evelyn Heinrichs to the Citizen Advisory Group.

FISCAL IMPACT: No budget adjustment required.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 7, 2003

APPROVAL OF IMPROVEMENT AGREEMENT WITH SAFEWAY INC.

RECOMMENDED ACTION: Approve the attached Improvement Agreement and authorize the City Manager to sign the agreement on behalf of the City with Safeway Inc.

Agenda Item # 3

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

EXECUTIVE SUMMARY:

This agreement is to guarantee the construction off-site improvements at Tennant Station. (See attached location map.) These public improvements are a condition of approval for the applicant's building permit request to construct a new Safeway Grocery Store located at Tennant Station. The estimated construction cost of the public improvements is \$344,845.

The applicant has furnished the City with the necessary documents and has made provision with the City to provide bonds guaranteeing the completion of public improvements prior to issuance of the building permit. Staff recommends that City Council approve the attached Improvement Agreement and authorize the City Manager to sign on behalf of the City.

FISCAL IMPACT:

Development review for this project is paid from development processing fees.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 7, 2003

Agenda Item # 4

Prepared By:

Asst. to the City Mgr.

Submitted By:

City Manager

THIRD QUARTER REPORT, 2002-03 WORKPLAN

RECOMMENDED ACTION:

Accept report.

EXECUTIVE SUMMARY:

The attached report documents the current status of the FY 2002-03 workplan. Each department has reported their workplan progress as of March 31, 2002. As of that point, 9% of all projects were completed early, 35% were completed or were proceeding as scheduled, 47% were expected to be completed late, and 10% were on hold.

As noted in the first and second quarter updates, project delays have occurred for a number of reasons, including the need for additional public input, time required to coordinate projects with outside agencies, and reduced staffing levels. Delays in completing the Downtown Plan have affected BAHS's development of a Monterey Corridor Assistance Program. The Morgan Hill Medical Foundation has not completed their needs assessment, and so a strategy to respond to these needs has not been developed. Assessment district for park and median maintenance – deferred due to Council Finance subcommittee work

Reduced staffing has particularly affected projects such as Planning's update of the cultural resources preservation ordinance, the development of new boat, trailer, and RV storage regulations, and their project to ensure right-of-way for Highway 101 expansion to eight lanes. Each of these projects is on hold for this fiscal year and will be carried over to FY 2003-04.

Current budget constraints have impacted workplan projects as well. The Human Resources Office has reduced usage of outside legal counsel, which has delayed completion of new personnel rules and regulations. Reduced capital expenditures this year have postponed the Building Division's plans to connect the Tidemark software system to their integrated voice response system, and deferred implementation of Tidemark permit tracking in Public Works. egovernment strategic plan

The year-end report on the 2002-03 workplan will be presented to the Council August 20, 2003.

FISCAL IMPACT:

No budget adjustment required.



CITY COUNCIL STAFF REPORT

MEETING DATE: MAY 7, 2003

BI-ANNUAL VACANCY RATE SURVEY

RECOMMENDED ACTION(S): Establish the bi-annual vacancy rate for April 2003 as recommended by the Planning Commission.

EXECUTIVE SUMMARY: According to the Morgan Hill Municipal Code, Chapter 17.36 relating to Condominium Conversions, the apartment vacancy rate shall be established in April and October of each year on the basis of a representative sampling of apartment buildings. The vacancy rate survey must be reported to both the Planning Commission and the City Council.

The most recent multi-family housing estimates from the State Department of Finance indicate a total of 1,691 multi-family units. Survey results account for over 50% of all such units; senior housing units are not included in the sampling but are included as supplemental information. Also, for general information purposes, included is a brief summary of current rent rates as compared to rent rates reported six months ago.

The survey has been completed and is attached. On April 8, 2003, the Planning Commission accepted the survey results which established the vacancy rate for April 2003 at 5%. It is recommended that the Council accept the Planning Commission's survey findings.

FISCAL IMPACT: N/A

Agenda Item # 5

Prepared By:

Municipal Services Assist.

Approved By:

BAHS Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: MAY 7, 2003

Agenda Item # 6

Prepared By:

Pam Borzone
Management Analyst

Approved By:

Gerald T. Galvin
Chief of Police

Submitted By:

City Manager

SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND

RECOMMENDED ACTION(S):

Approve the FY 02-03 Spending Plan for Supplemental Law Enforcement Services Fund

EXECUTIVE SUMMARY:

The Police Department has received \$100,000 in S.L.E.S.F. (COPS) funding in FY 02-03 and these funds must be spent by June 2004. Our Community Service Officer positions continue to meet the requirements of the grant for funding. C.S.O.s are civilian positions in the Police Department who respond to lower priority calls for service, increase some service levels and allow for us to make more productive use of sworn officers in a cost effective manner. It is our recommendation to fund salaries, benefits, uniform allowances and support supplies, as we have done in past years, for the three C.S.O. positions with S.L.E.S.F. funds. The legislation requires City Council to approve the spending plan at a public meeting and forward the approval to the County Supplemental Law Enforcement Oversight Committee.

SPENDING PLAN FY 02-03

Expenditures:

2 C.S.O.s Patrol (010-3210)	\$117,655*
1 C.S.O. Special Operations (010-3245)	\$ 49,250*
C.S.O. Van install electric windows (010-3210)	\$ 1,300
TOTAL	\$168,205

*This amount reflects a partial unfilled vacancy this year

Revenues:

October 2002 S.L.E.S.F. allocation	\$100,000
June 2002 S.L.E.S.F. balance	\$106,387
TOTAL	\$206,387

FISCAL IMPACT:

General Fund Expenditures for three C.S.O. positions are counterbalanced by S.L.E.S.F. fund transfer to the General Fund in the amount of \$168,205. This plan is in the adopted FY 02-03 budget. There is an unspent balance of \$38,182 which will continue to support the C.S.O. positions in FY 03-04.



CITY COUNCIL STAFF REPORT

MEETING DATE: MAY 7, 2003

Agenda Item # 7

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1614, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1523, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT TO INCORPORATE AN EXCEPTION TO LOSS OF BUILDING ALLOCATION FOR APPLICATION MP 00-09: LLAGAS-DELCO. (APN 764-32-005)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1614, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On April 16, 2003, the City Council Introduced Ordinance No. 1614, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1614, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1523, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT TO INCORPORATE AN EXCEPTION TO LOSS OF BUILDING ALLOCATION FOR APPLICATION MP 00-09: LLAGAS-DELCO. (APN 764-32-005)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission and City Council, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No.00-03, adopted March 14, 2000 and City Council Resolution No. 5470 approved May 2, 2001, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 99-24	15 FY 2001-02
	12 FY 2002-03
MP 00-10	12 FY 2002-03
	7 FY 2003-04
MP 01-05	14 FY 2003-04

SECTION 4. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 5. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 6. EXCEPTION TO LOSS OF BUILDING ALLOCATION. The project applicant has in a timely manner, submitted necessary planning applications to pursue development. Delays in the project processing have occurred due to extended environmental review, extended improvement plan processing, processing of Site Review approval, Water Quality Control Board and SCVWD processing; revised ADA requirements and a significant rain storm stalled the project grading. The delays are not a result of the developer's inaction and therefore, a one year Exception to Loss of Building Allocation, extending the time for commencement of construction for 2-12 months for 27 building allotments as shown in Section 8 of this Ordinance.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Exhibit B of the development agreement is amended to read as follows:

EXHIBIT "B"

DEVELOPMENT SCHEDULE

MP-99-24 & MP 00-10: Llagas/Hale-Delco
FY 2001-02 (15 allocations), FY 2002-03 (24 allocations) & FY 2003-04 (7 allocations)

I.	SUBDIVISION AND ZONING APPLICATIONS	
	Applications Filed:	(11-15-00)
II.	SITE REVIEW APPLICATION	
	Application Filed:	(8-15-01)
III.	FINAL MAP SUBMITTAL	
	Map, Improvements Agreement and Bonds:	(8-30-01)
IV.	BUILDING PERMIT SUBMITTAL-	
	Submit plans to Building Division for plan check:	
	FY 2001-02 12 units	(9-30-01)
	FY 2001-02 3 units	(2-01-03)
V.	PULL BUILDING PERMITS	
	FY 2001-02 12 units	(5-01-03)
	FY 2001-02 3 units	(9-01-03)
VI.	BUILDING PERMITS	
	Commence Construction:	
	FY 2001-02 12 units	(8-01-03)
	FY 2001-02 3 units	(11-01-03)
VII.	BUILDING PERMIT SUBMITTAL	
	Submit plans to Building Division for plan check:	
	FY 2002-03, 6 units	(2-01-03)
	FY 2003-04, 9 units	(9-01-03)
	FY 2003-04, 9 units	(9-01-03)
VIII.	PULL BUILDING PERMITS	
	FY 2002-03, 6 units	(9-01-03)
	FY 2003-04, 9 units	(12-01-03)
	FY 2003-04, 9 units	(5-01-04)
XIV.	BUILDING PERMITS	
	Commence Construction:	
	FY 2002-03, 6 units	(11-01-03)
	FY 2003-04, 9 units	(2-01-04)
	FY 2003-04, 9 units	(7-01-04)
XV.	BUILDING PERMIT SUBMITTAL	
	Submit plans to Building Division for plan check:	
	FY 2003-04, 7 units	(9-01-03)

XVI. PULL BUILDING PERMITS

FY 2003-04, 7 units

(4-01-04)

XVII. BUILDING PERMITS

Commence Construction:

FY 2003-04, 7 units

(6-30-04)

Failure to commence construction by the dates listed above, shall result in the loss of building allocations. Submittal of a Final Map Application or a Building Permit, six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additional, failure to meet the Final Map Submittal, Building Permit Submittal or Pull Permit deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 30 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16th Day of April 2003, and was finally adopted at a regular meeting of said Council on the 7th Day of May 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1614, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7th Day of May, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: MAY 7, 2003

Agenda Item # 8

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1615, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1523, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT TO INCORPORATE AN EXCEPTION TO LOSS OF BUILDING ALLOCATION FOR APPLICATION MP 00-10: HALE -DELCO (APNS 764-32-012 & 013)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1615, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On April 16, 2003, the City Council Introduced Ordinance No. 1615, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1615, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1523, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT TO INCORPORATE AN EXCEPTION TO LOSS OF BUILDING ALLOCATION FOR APPLICATION MP 00-10: HALE -DELCO (APNS 764-32-012 & 013)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission and City Council, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No.00-03, adopted March 14, 2000 and City Council Resolution No. 5470 approved May 2, 2001, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 99-31: Hale-Sheng	7 for FY 2001-02
	6 for FY 2002-03

SECTION 4. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 5. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 6. EXCEPTION TO LOSS OF BUILDING ALLOCATION. The project applicant has in a timely manner, submitted necessary planning applications to pursue development. Delays in the project processing have occurred due to extended environmental review, extended improvement plan processing, processing of Site Review approval, Water Quality Control Board and SCVWD processing; revised ADA requirements and a significant rain storm stalled the project grading. The delays are not a result of the developer's inaction and therefore, a one year Exception to Loss of Building Allocation, extending the time for commencement of construction for 3 months for 13 building allotments as shown in Section 8 of this Ordinance.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Exhibit B of the development agreement is amended to read as follows:

EXHIBIT "B"

**DEVELOPMENT SCHEDULE
MP-99-31: Hale-Delco (Sheng)
FY 2001-02 (7 allotments) & FY 2002-03 (6 allotments)**

I.	SUBDIVISION AND ZONING APPLICATIONS	
	Applications Filed:	(11-15-00)
II.	SITE REVIEW APPLICATION	(8-15-01)
	Application Filed:	
III.	FINAL MAP SUBMITTAL	(8-30-01)
	Map, Improvements Agreement and Bonds:	
IV.	BUILDING PERMIT SUBMITTAL	
	Submit plans to Building Division for plan check:	
	FY 2001-02, 7 units	(2-01-03)
	FY 2002-03, 6 units	(2-01-03)
V.	PULL BUILDING PERMITS	
	FY 2001-02, 7 units	(8-01-03)
	FY 2002-03, 6 units	(8-01-03)
VI.	BUILDING PERMITS	
	Commence Construction:	
	FY 2001-02, 7 units	(9-30-03)
	FY 2002-03, 6 units	(9-30-03)

Failure to obtain building permits and commence construction by the date listed above, shall result in the loss of building allocations. Submittal of a Final Map Application or a Building Permit Application, six (6) or more months beyond the filing dates listed above shall result in applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additional, failure to meet the Final Map Submittal, Building Permit Submittal, or Pull Permit deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 7 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

Failure to obtain building permits and commence construction by the date listed above, shall result in the loss of building allocations. Submittal of a Final Map Application or a Building Permit Application, six (6) or more months beyond the filing dates listed above shall result in applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in

processing the applications within the required time limits. Additional, failure to meet the Final Map Submittal, Building Permit Submittal, or Pull Permit deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 7 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16th Day of April 2003, and was finally adopted at a regular meeting of said Council on the 7th Day of May 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1615, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7th Day of May, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: May 7, 2003

Agenda Item #9

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1616, NEW SERIES, AS AMENDED

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE THARALDSON PLANNED UNIT DEVELOPMENT (PUD) AND PRECISE DEVELOPMENT PLAN TO REPLACE TWO SIT DOWN RESTAURANTS (6,300 SQUARE FOOT AND 8,000 SQUARE FOOT IN SIZE) WITH A 3,253-SQUARE FOOT DRIVE-THRU FAST FOOD RESTAURANT AND A SIT DOWN RESTAURANT 5,000 TO 6,500 SQUARE FOOT IN SIZE. (APNs 726-33-023 & -024)(ZA-02-18: COCHRANE-IN-N-OUT BURGER/ APPLEBEE'S)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1616, New Series, as amended, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On April 30, 2003, the City Council Introduced Ordinance No. 1616, New Series, deleting the last sentence of Section 9F, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1616, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE THARALDSON PLANNED UNIT DEVELOPMENT (PUD) AND PRECISE DEVELOPMENT PLAN TO REPLACE TWO SIT DOWN RESTAURANTS (6,300 SQUARE FOOT AND 8,000 SQUARE FOOT IN SIZE) WITH A 3,253-SQUARE FOOT DRIVE-THRU FAST FOOD RESTAURANT AND A SIT DOWN RESTAURANT 5,000 TO 6,500 SQUARE FOOT IN SIZE. (APNs 726-33-023 & -024)(ZA-02-18: COCHRANE-IN-N-OUT BURGER/ APPLEBEE'S)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** General Plan Policy 14a promotes enhancement of the visual integrity of gateways to the City. The proposed project, which is located in a gateway location, is consistent with General Plan Policy 14a. Both restaurants will be subject to review and approval by the City's Architectural Review Board, and views of the drive-thru lane for the fast food restaurant will be mitigated through the installation of landscaping within the Caltrans right-of-way. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- SECTION 4.** The City Council hereby approves a precise development plan as contained in that certain series of documents dated February 24, 2003, on file in the Community Development Department, entitled "In-N-Out Burger Restaurant" prepared by In-N-Out Burger. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and setbacks of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 5.** This zoning amendment approval shall remain in effect for two years after final adoption of this ordinance. Should a fast-food restaurant and sit-down restaurant not be constructed in compliance with the adopted precise development plan and any other conditions imposed by this ordinance and applicable conditions of approval before the end of the two year time limit, this zoning amendment approval shall expire and any amendment to the previous zoning shall be null and void with the exception of paragraph 9(D) below.
- SECTION 6.** The City Council hereby approves the exceptions to the city-wide PUD development standards listed below for both the sit down and fast food restaurant sites. The Council

hereby finds that: A) Approval of the exception is necessary for the preservation and enjoyment of substantial property rights of the applicant; B) The exception will only be approved to the extent necessary for the preservation and enjoyment of the substantial property rights of the applicant; C) The effect of the reduction or elimination of the development standard will be substantially mitigated by the provision of other design features or enhancements to the project; and D) Approval of the exception will not be outweighed by the adverse effects to the public health safety and welfare of persons working or residing in the area.

- A. (§ 18.30.090.A.18) Location of restaurants. The Council hereby approves the location of the sit down and fast food restaurants, as shown on the site plan date stamped Feb. 24, 2003.
- B. (§ 18.30.090.C.4) 30-ft landscape buffer. The Council hereby approves a 27-ft encroachment into the required 30-ft landscape buffer, as shown on the site plan date stamped Feb. 24, 2003. The encroachment into the landscape buffer is necessary to provide the drive thru lane as proposed, and the landscape area will be supplemented by the adjacent Caltrans right-of-way landscaping.
- C. (§ 18.30.090.C.5) 50 percent building perimeter landscaping. The Council recommends that the applicant provide landscaping along the perimeter of the fast food restaurant building where possible, but hereby approves the building perimeter landscaping as shown on the site plan date stamped Feb. 24, 2003 and as amended by Condition I under Section 8 of this ordinance.
- D. (§ 18.30.090.C.12) 10-ft wide landscape requirement. The Council recommends that the applicant provide minimum 10-ft wide landscape areas where possible, but hereby approves landscape areas less than 10 ft in width where necessary to improve on-site parking and circulation.
- E. (§ 18.30.090.A.4) No visual flat rooflines allowed. The Council hereby approves parapet walls within the Tharaldson PUD where it would result in a superior building design.
- F. (§ 18.30.090.A.1 and § 18.30.090.A.11) Architectural consistency. The Council recommends that the applicants comply with the city-wide PUD architectural standards to the greatest extent possible, however, hereby approves exceptions to the PUD standards where it will result in a superior design. Also, the Council hereby grants the Architectural Review Board the authority to redefine the architectural theme of the Tharaldson PUD.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 9. The approved project shall be subject to the following conditions:

- A. The applicant shall comply with the mitigation measures of the mitigated Negative Declaration.

- B. With the exception of any deviations approved by the City Council, the project shall be subject to compliance with the Tharaldson PUD guidelines and city-wide PUD standards, as contained in Ordinance No. 1475 and Chapter 18.30 of the Morgan Hill Municipal Code (MHMC), respectively.
- C. The signs identified on the project plans, including but not limited to menu boards, directional signs, advertising signs and building identification signs, are not approved as part of the zoning amendment application. Signs require separate review and approval by the Planning Division.
- D. Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of applicant's project. In addition, developer shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, developer shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted. This provision shall remain in effect in perpetuity and shall survive despite any further action, including but not limited to amendments or rescission of zoning on the parcel.
- E. The sit down restaurant shall be under construction prior to the issuance of a building permit for the fast food restaurant.
- F. If an interim access driveway is required on Cochrane Road, the interim driveway shall be located as close as possible to the ultimate driveway location (centered on the property line between the two restaurant sites), and located just west of the Caltrans right of way.
- G. Within one year of issuance of building permit for the sit-down restaurant, the applicant shall secure approval from Caltrans for the construction of the new right turn in/right turn out driveway on Cochrane Road, centered on the property line between the two restaurant sites, and for the landscaping and on-going maintenance of the Caltrans right-of-way landscaping at the northwest corner of Cochrane Road and Highway 101. Should Caltrans not approve the encroachment request, and should the Public Works Director find that the interim driveway location on Cochrane Road pose traffic circulation or safety problems, the matter shall be reviewed by the Planning Commission and appropriate mitigation identified. That mitigation shall be implemented by the property owner at his expense, if any.
- H. Upon closure of the existing right turn in only driveway on Cochrane Road, the applicant shall berm and landscape the area to the satisfaction of the Planning Division.

- I. The applicant shall provide additional landscaping at the southwest corner of the fast food restaurant building, in between the columns, similar to the landscaping proposed at the southeast area of the building.

The foregoing ordinance was introduced at the special meeting of the City Council of the City of Morgan Hill held on the 30th Day of April 2003, and was finally adopted at a regular meeting of said Council on the 7th Day of May 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1616, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7th Day of May, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR REDEVELOPMENT
AND SPECIAL CITY COUNCIL MEETING
MINUTES – APRIL 23, 2003**

CALL TO ORDER

Chairperson/Mayor Kennedy called the meeting to order at 4:00 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Carr, Chang, Sellers, Tate and Chairperson/Mayor Kennedy.

DECLARATION OF POSTING OF AGENDA

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

Redevelopment Agency Action

1. WORKSHOP FOR SANTA CLARA COUNTY'S COURTHOUSE PROJECT

Director of Business Assistance and Housing Services Toy presented the staff report.

Mallary Cusenberry addressed the design changes made since the last Redevelopment Agency meeting. He noted that a landscaped pedestrian path does not cross drive aisles. A secondary pedestrian landscape route is proposed from the buildings leading to a trail along side the retention area on the west side, along the railroad tracks. He stated that there is a full pedestrian route that includes Butterfield and three primary north/south accesses and two primary east/west accesses that would move through the site. He addressed the recommendation that the frontage road access along Butterfield. He felt that this was a good suggestion but that from a site planning stand point would result in the loss of parking and would result in the inability to meet parking requirements. He studied and presented the inclusion of protruding bays along the Butterfield elevations to the committee. There was a sense that it would diminish the architectural feel of the courthouse. He informed the Council that the County/design team looked closely at flipping the site plan, moving the two buildings to opposite sites per Council discussion, indicating that there were a few concerns raised with this design alternative:

- Important to have a symbolic focus of the campus on the corner intersection as opposed to a mid block condition
- Flipping buildings would result in a two story component of the building being close to the residential neighborhood. It was felt that the higher portions of the buildings were being placed directly against the residential area, stepping down the buildings away from the neighborhood as opposed to the current approach where more activity/attention is given to the corner, stepping the project down toward the single story building adjacent to the residential neighborhood

- Flipping building would create significant impacts on the schedule for the project, including additional costs
- Would result in operational concerns
- Flipping building would not allow access from one point.

Alicia Flynn addressed the parking needs as addressed in the Environmental Impact Report (EIR), indicating that there was sufficient parking at the opening of the facility and that an additional 50 parking spaces would be needed by the year 2020. Therefore, space is being reserved to accommodate the additional parking required for the facility. She also addressed drainage and retention needs, indicating that they did not want to pave more than they had to.

Agency Member Sellers said that in terms of flow, he felt the pathways around the edge of the project would increase access to the downtown area. However, he felt that it was human nature for individuals to walk through the parking lot. He felt that a semi path in the middle of the parking lot would help address this issue.

Mr. Cusenberry indicated that the design team looked at a diagonal path through the parking lot but that it would not be feasible because it would result in loss of parking spaces.

Chairman Kennedy inquired if there was a way to add a mid parking lot, east/west pedestrian walkway.

Mr. Cusenberry responded that the design team can take a look into this suggestion but that required parking spaces would need to be taken into consideration and yet meet setback requirements.

Ms. Flynn indicated that should the parcel to the north be purchased, a walkway pedestrian connection could be made to the property to the north.

Chairman Kennedy recommended that the pedestrian connection be considered as a possible alternative.

Agency Member Tate stated that he did not like the “big box” appearance of the buildings.

Vice-chair Chang inquired whether the screening could be designed differently as she felt that the inclusion of the screen wall elongates the design.

Mr. Cusenberry responded that the screen wall could be stepped down, the translucent elements could be provided, and landscaping incorporated. He indicated that the screen area affords flexibility.

Chairman Kennedy inquired as to the final colors.

Mr. Cusenberry responded that decisions on the colors have not been made to date. He said that it is the goal to have at least three color schemes that are distinctively different.

Agency Member Sellers inquired whether any thought has been given to varying the texture or colors of the wall panels.

Mr. Cusenberry said that consideration is being given to varying the texture between a rough face stone and a home stone in order to make a distinction in the base/surface treatment of the panels. He supports the idea of the use of a colonnade to provide a vertical variation in the design.

Chairman Kennedy said that inclusion of more earth tone colors would give the building a feel of Morgan Hill, noting that the design depicts black and white colors and gives a negative impression. The use of a beige/tan color would be more attractive.

Mr. Cusenberry said that the color scheme presented is one of the options being considered.

Chairman Kennedy stated his appreciation with the fact that the design team opened the design. However, he expressed concern with the view of the big massive corner. He inquired whether the design could be stepped back in order to open up the perspective. He stated that the Council specifically requested that the buildings not look like a block or have a massive appearance.

Mr. Cusenberry said that the design team would study this concern.

Project Manager Dumas stated that he liked the use of the horizontal elements and recommended that they be used to create shadows and deepness within the wall.

Agency Member Sellers felt that one place the County would like the design to state that it is a courthouse is in the wall that would bear the seal.

Mr. Cusenberry said that the design has two strong court gestures that need to be personified. It was the idea to have a portion of the building designed to be elegant and sample in its treatment. There was a concern about articulating the design too much that the portion of the building may be perceived as an entryway. There was also concern that too much would be taking place in one place. He informed the Council that he would generate a computer model so that the Council can see what would be viewed from Dunne and Butterfield. He said that he tried to create an interior design that depicts a courtyard. He indicated that a walkway between the building and courtyard is not feasible because of security reasons.

Chairman Kennedy stated that he was trying to find a way to break up the long continuous wall, noting that you would have to walk approximately 600 feet from the building to the end of the courtyard.

Mr. Cusenberry said that pedestrians would be coming primarily from the intersection of Diana/Butterfield and from the parking lot. He said that there is no direct way to access the site from the residential neighborhood through the sound wall. He said that there are options for accessing the courthouse facility from the Caltrans station and the downtown area.

Agency Member Tate noted that an element being used on the corner gives the appearance of a guard tower.

Mr. Cusenberry indicated that the tower elements were being used to depict primary entrances to the building and to help individuals find their way along the campus.

Ms. Flynn indicated that perhaps some of these elements could be lowered.

Chairman Kennedy inquired whether the northern portion of the court yard design could be stepped up versus the proposed continuity in design. He felt that the design gives a boxy appearance, was massive, and that it was an over kill.

Director of Community Development Bischoff appreciated the efforts of the architect to try and address the concerns raised at the last meeting, and that they have done a lot to address a number of the concerns. He felt that it was important to provide a direct line of access to the facility. He also felt that the secondary access was nicely designed but that it does not encourage individuals to walk to the downtown. He understood the comments made by Ms. Flynn regarding the parking. However, he felt that there were other ways to address the pedestrian pathway issue. He noted that the number of trees being proposed in the parking area exceed the City's requirements. Instead of having a bay of trees, the design could incorporate a tree in the middle that would allow additional parking spaces. This would allow the design team to incorporate a direct line of access. Previous comments addressed the concern of the massiveness of the building and the need to break up the vertical and horizontal elements. Increasing the height of the main lobby areas and providing a pedestrian scale canopy along Butterfield helps but was not sure whether these were enough. He felt that the justice building is a boxy looking building and is not an image of Morgan Hill. He was not sure the changes made were sufficient to meet the concerns raised previously.

Mr. Cusenberry said that he worked hard to incorporate a sidewalk along both sides of the drive aisle but that a parking stall was an issue. He stated that one of the goals of the project is to provide a feel of an orchard, carrying forward Morgan Hill's agricultural past. He said that minimizing the number of trees would decrease the feel of the orchard and would increase the temperature in the parking lot significantly.

Agency Member Carr appreciated the significant number of trees being proposed. However, he recommended that the design retain the trees proposed outside and limit the number of trees proposed inside in order to create the walkway.

Chairman Kennedy requested that the County design team work with City staff on the walkway issue.

Chairman Tate said that he likes the trees as presented. He would prefer to have the walking pathway identified through signage and retain the orchard feel.

Mr. Toy addressed the possible purchase of the parcel to the north to be used for a fire station and the need to incorporate access to this site.

Mr. Cusenberry expressed concern that the fire station would affect the EIR that has been completed for this project.

Ms. Flynn said that she has been advised that the fire station site is not a part of this parcel and would not meet the requirements of the EIR. She said that the rows of trees are a bio source and part of the storm water treatment/capture.

Chairman Kennedy felt that there is a way to handle this issue without eliminating any trees. He felt that there were issues of overriding concerns to deal with mitigation measures.

Action: *It was the consensus of the Agency Board that there was **general support** of extending the walkway without the loss of trees, making the walkway the main visual path. The justice building needs to pick up Morgan Hill's character.*

Ms. Flynn felt that one of the comments that everyone seems to agree upon is the option of moving the walkway located on the left side to the middle of the site as an alternative.

Chairman Kennedy stated that the Agency Board appreciates the progress being made but felt that more work needs to be done.

Council Member Carr felt that the design team has produced great work and addressed a lot of the issues raised by the Agency Board.

Agency Member Tate stated that he liked the site plan and the location of the buildings. However, he did not like the design of the buildings themselves. He felt that if the courthouse gets more of a Morgan Hill treatment, it would make the site more appealing.

City Council Action

OTHER BUSINESS:

2. LIBRARY COMMISSION AND PARKS & RECREATION COMMISSION INTERVIEWS

The City Council conducted interviews to fill vacancies on the Library Commission as follows: Kathleen Keeshen, George Nale, Kathleen Stanaway. The City Council also conducted interviews to fill vacancies on the Parks & Recreation Commission as follows: Jesus Ambriz, Rick Page, Marlon Spencer, and Craig van Keulen.

Action: *The City Council **Continued** interviews of applicants for positions on the Library Commission and the Parks and Recreation Commission to April 30, 2003.*

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Legal Authority: Government Code Section 54965.9(a)

Case Name: Santa Clara Valley Audubon Society v. City of Morgan Hill

Case No.: Santa Clara County Superior Court, No. CV 815655

Attendees: City Council, City Manager, City Attorney

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Case Name: Allivato v. City of Morgan Hill et al.

Case Number: Santa Clara County Superior CV 810111

Attendees: City Attorney, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Chairperson/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Chairperson/Mayor Kennedy adjourned the meeting to Closed Session at 6:02 p.m.

RECONVENE

Chairperson/Mayor Kennedy reconvened the meeting at 7:03 p.m.

CLOSED SESSION ANNOUNCEMENT

Agency Counsel/City Attorney Leichter announced that there was no reportable action taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Chairperson/Mayor Kennedy, Ryan Shepherd led the Pledge of Allegiance.

RECOGNITIONS

Chairperson/Mayor Kennedy deferred the presentation of Certificates of Recognition to Beth Ann Gardner, Gerald Kinkade, and James Rothert, outgoing members of the Bicycle & Trails Advisory Committee, to a future Council meeting date.

PROCLAMATIONS

Chairperson/Mayor Kennedy presented a proclamation to Volunteer Coordinator Lengsfeld proclaiming April 27 through May 3, 2003 as *National Volunteer Week*.

Chairperson/Mayor Kennedy presented a proclamation to Betty Garcia, of the Child Abuse Council of Santa Clara County regarding *Child Abuse Awareness Month*.

PRESENTATIONS

Assistant to the City Manager Eulo, announced the winners of the Poster Contest. as follows, K-3: 1st Marissa van Rhijn; 2nd place - Amy Liu 3rd place - Allen Engle; Honorable mentions – Brittney Hall and Emily Hovanessian, Clara Kennedy, Steven Marquez, Nicholas Hamilton; 4-7: 1st place Meredith Diddens; 2nd place Zachary Thomas; 3rd place – Allee Feber; Honorable Mention – Thomas Lau, Moira Scanlon, Alyssa Barsanti, Petra Halbur; 7-9 1st Matice McClellen, 2nd place – Erica Margatich, 3rd place – Stefania Mercante, Honorable Mention – Erin Lawless, Carissa Pausano, Katie Rule, 10-12 1st Place – Ian Webb, and 2nd place – Ryan Shepherd.

Assistant to the City Manager Eulo informed the City Council that Julie Osborne, South Valley Disposal and Recycling, was in attendance to present the Home and Business Recyclers of the Year Awards.

Julie Osborne recognized the 2002 Business Recycler of the Year: Keith and Divana Meyer - Nob Hill Wash and Dry; and the 2002 Residential Recycle award is the Fosbaugh Family.

PRESENTATION

Mr. Eulo indicated that the City has been participating in the Green Business Program for approximately six years. Recently, Mayor Pro Tempore Chang requested that staff agendaize discussion of the potential for the City to become a green city. He stated that there is an item at the end of the agenda to discuss this issue. However, he indicated that Carl Berg from the Santa Clara County Green Business Program was in attendance to make a presentation about the Countywide Green Business Program.

Ms. Berg presented a power point presentation about the County's Green Business Program, indicating that it is the goal of the program to encourage the use of environmentally sound business practices through assistance and recognition.

Mayor Kennedy inquired how much staff time would be required for a City the size of Morgan Hill to participate in the Countywide Green Business Program. Ms. Berg responded that Mr. Eulo would devote some time for strategic planning purposes and that there would be other department staff

members who would also contribute time. She said that Mr. Eulo would have a better sense about how much staff time would be needed to dedicate to this program.

CITY COUNCIL SUB-COMMITTEE REPORT

Council Member Carr stated that the City's Legislative Subcommittee met last week and reviewed 16 legislative proposals. The 16 legislative proposals are outlined in a memo prepared by Assistant to the City Manager Eulo. Of the 16 legislative proposals, he indicated that the Legislative Subcommittee took positions on 11. The Legislative Subcommittee chose not to take positions on the others or referred them back to staff for further information. He stated that the legislative proposals came from individual Council Members, as staff/departments have suggestions, and Mayor Pro Tempore Chang who has brought a lot of them that will be coming before the County Cities Association, Legislative Action Committee. He noted that one of the legislative proposals came from Mayor Kennedy based on a request for support of the development of a National Housing Trust Fund. He stated that the Legislative Subcommittee is recommending support of the National Housing Trust Fund.

OTHER REPORTS

None.

CITY MANAGER REPORT

City Manager Tewes announced that Saturday, April 26, 2003 at 8:00 a.m. the annual City Beautification Day would commence at City Hall. He stated that volunteers are still needed for this event. He reported good news on the perchlorate front. He said that the Council has directed that staff conduct monthly tests of the 13 production wells. He stated that perchlorate is a chemical recently discovered in the ground water in south county, attributable to the use of perchlorate in a manufacturing process by Olin Corporation at a site in Morgan Hill located at Tennant and Railroad Avenues. He said that over the past couple of months, staff has reported low levels of detection in some of the City's wells intermittently. This month, of the 13 production wells, all but one has come back as none detect. The one well is located on Condit Road and is currently off line. It received a reading of 5 parts per billion (ppb) and that the City is required to obtain a confirming sample under state regulations. If water is found to be over 4 ppb, agencies are required to take a second sample and that the average would establish the action level. If the sample is at 4 ppb, the City would be required to notify the City Council and the public if it is the decision of the City to deliver water containing that level of contaminate. He stated that the City has gone beyond this and has taken this well and other wells off line and that they will remain off line until the situation clarifies itself. Under the current regulations, the City is not required to take the wells off line until they reach 40 ppb, noting that the City has had no readings coming close to this level. He said that there are a number of sources to obtain information about perchlorate such as the Valley Water District's website. Another agency that has the statutory authority and responsibility to perform the clean up is the Regional Water Quality Control Board. He indicated that the Board will be hosting a community meeting at Gavilan College on Saturday, May 3 at 10 a.m. at which time the Board will bring a variety of experts on several topics, including cleanup techniques. Public health officials will be in attendance to address the health affects of perchlorate.

PUBLIC COMMENT

Marby Lee, 960 Oak Park Drive, requested Council support in bringing Whole Foods and Trader Joes into Morgan Hill, indicating that a letter writing campaign is underway by a group of citizens hoping to bring them into Morgan Hill. She requested that Council welcome Whole Foods and Trader Joes with open arms, trying to forge a successful partnership for opening a store here.

Cindy Gobin concurred that good alternative grocery stores are a great idea for Morgan Hill and that the City should advocate more green businesses like these.

Mayor Kennedy stated that he would make a personal commitment to help with this effort, working with City staff.

Director of Business Assistance and Housing Services Toy stated that on an annual basis, staff contracts these types of businesses. In general these types of businesses are interested in Morgan Hill but that they are not in an expansion mode or the City does not have the mature market that they are looking for. He felt that a letter campaign is great and could only help. This effort may encourage these businesses to reconsider the matter. He pointed out that the Chamber of Commerce has also contemplated undertaking a letter campaign as well. He said that it might be helpful to coordinate this effort with the Chamber of Commerce in order to make it highly successful.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 3 - 5 as follows:*

3. **MARCH 2003 FINANCE AND INVESTMENT REPORT**

Action: ***Accepted** and **Filed** Report.*

4. **NOLL & TAM ARCHITECTS ADDITIONAL PREPARATION OF CYCLE I LIBRARY BOND ACT OF 2000 GRANT APPLICATION SUBMITTED JUNE 13, 2002**

Action: ***Authorized** Amendment of Contract Agreement with Noll & Tam Architects to Provide Additional Services in the Preparation of the Cycle I Library Bond Act of 2000 Grant Application, not to exceed \$20,000.*

5. **REQUEST FOR STATEMENTS OF INTEREST FOR THE POLICE FACILITY (17605 MONTEREY ROAD)**

Action: ***Authorized** Staff to Issue a Request for "Statements of Interest" (SOI) for the Sale or Lease of the Current Police Facility, Located at 17605 Monterey Road.*

City Council Action

CONSENT CALENDAR:

Council Members Carr and Sellers requested that item 10 be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 6 - 9 as follows:*

6. **AMENDMENT TO CONSULTANT AGREEMENT WITH CONSOLIDATED CM**

Action: ***Authorized** the City Manager to Execute a Second Amendment to the Consultant Agreement with Consolidated CM for the Community Center Project, Subject to City Attorney Approval.*

7. **RECYCLING GRANT**

Action: ***Adopted** Resolution No. 5665, Authorizing the City Manager to Request Funding.*

8. **APPLICATION FOR FEDERAL LAND AND WATER CONSERVATION FUND GRANT-IN-AID PROGRAM**

Action: *1) **Approved** the Filing of an Application for the Land and Water Conservation Fund Grant-In-Aid Program; 2) **Certified** that 50% Matching Funds are Available through CDBG Funding; 3) **Certified** that the Galvan Park Improvements Project is Compatible with the City's Land Use Plans; 4) **Adopted** Resolution No. 5666, Approving Application; and 5) **Appointed** J. Edward Tewes, City Manager, as Agent of the City to Conduct All Negotiations and Execute and Submit all Documents; Including, but Not Limited To, Applications, Agreements, and Statements Necessary to Complete the Project.*

9. **AMENDMENT TO CONTRACT AGREEMENT WITH SPORTS MANAGEMENT GROUP (SMG)**

Action: ***Authorized** Amendment of the Contract Agreement with the Sports Management Group for Operational Planning, Policies and Procedures for the Community and Cultural Center and the Community Playhouse, as well as Operator and Master Plan Services for the Indoor Community Recreation Center, not to exceed \$21,250.*

10. **LIBRARY COMMISSION RECOMMENDATION TO APPROPRIATE FUNDS TO OPEN LIBRARY ON SUNDAYS**

Council Member Sellers said that earlier this evening, in the course of the Library Commission discussion, there was a strong interest in Sunday library hours. He noted that Morgan Hill is one of only two cities in Santa Clara County that does not currently offer Sunday library hours. He felt that the need was as acute in Morgan Hill as it was anywhere else. He was pleased to see that the City is considering Sunday hours even though this is a very difficult budget year, noting that this is a relatively minor budget addition. He felt that the Library Commission would be interested in helping further offset the

cost by looking at private and other funding sources.

Council Member Carr stated that he was supportive of expanding the weekend library hours. He assumed that within the Library Commission's recommendation to the City Council that they discussed all of the alternatives on how to get the library facility opened on Sundays. He inquired whether the only alternative that was considered by the Commission was City funding for the Sunday hours.

Recreation and Community Services Manager Spier indicated that the Library Commission took a look at alternatives, including the Friends of the Morgan Hill Library conducting a fundraising campaign. There was a lot of discussion about altering hours; perhaps closing the library on a Monday or Tuesday in order to open up on a Sunday. Another alternative would be to use staff on hand and spread out the hours over the week. It appears that all the alternatives had more negatives that were associated with them. One of the biggest issues about switching hours throughout the week is that library staff felt that they were so established with the days of the week that in order to provide enough coverage on Sunday, it would limit their ability to service their patrons during the week. There is sick coverage and union issues involved. Therefore, the Library was not able to add hours and subtract them from another day.

Council Member Carr was pleased to hear that a range of alternatives were reviewed. He expressed concern that a \$78,000 appropriation, in a difficult budget year, is being recommended without benefit of Council discussion of alternatives. He noted that the recommended action is to receive the recommendation so that it is considered as part of the budget process. He did not want to overlook the fact that this is not the only way to get Sunday hours.

Council Member Tate said that the Library Commission is still looking at other revenue sources such as the creation of their own foundation or becoming part of the Morgan Hill Community Foundation as well as other options. The Library Commission is looking at the Friends of the Saratoga Library who raised \$¾ million to furnish their new library. He said that the Library Commission felt that it was important to be on record with the Council that this is something the community needs and that they would support it every way they can, looking at alternatives.

Council Member Sellers suggested that the Council challenge the Library Commission at the next meeting to come up with what they believe they can reasonably put together in the community. This will give the Council some sense when it goes through budget deliberations what the budgetary needs will be or will there be matching funds.

Council Member Carr suggested that the Council challenge the Library Commission to take the request for additional hours to the County Board of Supervisors as the operation of the County library system is the responsibility of the County as part of their budget process. He felt that this was a strange way for a Commission to send a recommendation to the Council about an appropriation when the Council has not yet studied the budget. He did not want to get into the mode where individuals, task forces or committees will start thinking that they need to start sending budget recommendations to the Council while the budget is being formed so that they get funding earmarked, especially when the City is not the first responsible agency for operations and services.

Mayor Pro Tempore Chang said that she has been advised that the City needs to cut \$400,000-\$500,000 in this year's budget. Although she totally agrees with the concept of this issue, she felt that the timing was a little off.

Council Member Tate said that the process used by the Library Joint Powers Authority for Santa Clara County to get funds to each individual library is set by a formula that was agreed to at the time that the Joint Powers Authority was established. He said that the Joint Powers Authority will be discussing state take a ways from the Library. The City can go to the County Library Joint Powers Authority to state that the City wants funding done differently. He said that this was thoroughly explored by the Library Commission before coming forward with the request this evening. He stated that there is no way to adjust County funding within the existing budget as it is set by a formula agreed to by the City as part of the Joint Powers Authority. He felt that there were things that the City can do to keep the state funding coming that the Council can discuss on May 7. He clarified that other cities with extended library Sunday hours are being paid for by their respective city coffers or by revamping how they use their formula money.

City Manager Tewes indicated that the City's budget does not currently include funds for operating the library as it is entirely the responsibility of the Joint Powers Authority. The Joint Powers Authority receives resources from a voter approved tax and that they will be considering extending this tax. One option would be to set the tax rate at a level that would provide the needed level of services in each of the communities so that no community would need to supplement the budget with discretionary general fund resources. A second option is supplemental resources by cities that have proposed supplemental services. The Council now has a recommendation from the Library Commission to supplement Sunday library hours. He felt that it was equally appropriate to ask the County Board of Supervisors to supplement for their share of the residents who benefit from the library as it is to ask the City Council to supplement for the residents who benefit from the library. It was his belief that all these options should be considered. He indicated that staff will be providing the Council with a budget recommendation on May 14.

Council Member Sellers agreed that there is concern that this would set a precedent. He was comfortable with moving forward with the action before the Council this evening as it brings it to the forefront of discussion. He appreciated the forward thinking of the Library Commission and that it was his hope that the Council would be able to figure out a way to make Sunday library hours a reality.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Received** the Recommendation from Library Commission and that the Council **Will Consider** the Recommendation During the Fiscal Year 2003-2004 Budget Deliberation process.*

Redevelopment Agency and City Council Action

CONSENT CALENDAR:

Action: *On a motion by Agency/Council Member Tate and seconded by Agency/Council Member Sellers, the Agency Board /Council unanimously (5-0) **Approved** Consent Calendar Item 11 as follows:*

11. AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF BERG AND PARKER, LLP

Action: ***Authorized** the City Manager to Execute an Amended Agreement with the Law Firm of Berg & Parker, LLP.*

City Council Action

PUBLIC HEARINGS:

12. ZONING AMENDMENT APPLICATION, ZA-02-18: COCHRANE – IN-N-OUT BURGERS/APPLEBEE’S

Director of Community Development Bischoff presented the staff report. He indicated that two letters were received within the last couple of days with respect to this application and that they have been made available to the Council this evening. He summarized the amendments proposed to the PUD that include landscaping, egress/ingress, location of the building and franchise architecture. He identified the recommendation of the Planning Commission that would allow for a fast food restaurant in lieu of the two sit down restaurants, deviation from the landscape requirements, allowing the franchise architecture, and the requirement to move the driveway as far east as possible. In addition, the Planning Commission included a condition that states that should the Council approve these conditions and to ensure that the City gets at least one sit down restaurant, it is to be stipulated that the building permits are not to be issued to In-N-Out Burgers until such time that Applebee’s is under construction. The second ordinance included in the packet is staff’s recommended ordinance that would allow for some of the deviations but would not allow the fast food restaurant to be included.

Council Member Sellers noted that staff referenced Applebee’s in a couple of occasions, noting that he did not see this specific name mentioned in the ordinance other than the In-N-Out Restaurant. He said that it was his understanding that a sit down restaurant of the caliber of an Applebee’s restaurant is being proposed.

Mr. Bischoff said that it was his understanding that the applicant is proposing two specific restaurants: In-N-Out Burgers and an Applebee’s restaurant. He stated that there was no other sit down restaurant under consideration at this time.

Council Member Carr noted that two items require Caltran’s approval: landscape and the ingress/egress drive. He inquired whether these were issues that the City can expect a specific time line to receive a response from Caltran.

Mr. Bischoff stated that with respect to the landscaping, public works staff believes that there is a high likelihood that Caltran would approve landscaping of their area but that it is uncertain as to the level of landscaping. In terms of encroachment into Caltran's property for the driveway, he did not have a response.

Mayor Pro Tempore Chang inquired as to the operating hours of the In-N-Out Burgers.

Mr. Bischoff responded that the ordinance does not limit the hours of operation. However, the Council could ask the applicant the hours being proposed.

Mayor Kennedy opened the public hearing

Ron Volley, Northern California Real Estate Manager for In-N-Out Burger, submitted a petition containing over 300 signatures urging the City Council to approve the In-N-Out Burger at this gateway location. Reasons cited in the petition are as follows: it would bring 50-75 jobs into the area; jobs are above minimum wages; would generate a minimum of \$50,000 in sales tax dollars, and that the design proposed is of high quality. He indicated that since the last presentation before the Council, the site plan has changed many times. With the help of staff, the Architectural Review Board (ARB) and the Planning Commission approved the very best layout and design for the project. He said that the original PUD site plan that shows two sit down restaurants overwhelming the site, has dead end parking, does not have sufficient trash enclosures and have a number of problems associated with it. He stated that he has spoken with many sit down restaurants who indicate that the site is grossly under parked and was not a well conceived plan to begin with. He indicated that both staff and the Planning Commission agreed with the traffic engineer that the traffic access and egress was poorly designed. The right turns in only forces all uses in the PUD to go to the road and stack, forcing everyone to make a left turn or to make a challenging u-turn from the Chevron gas station.

Mr. Volley stated that there are several different architectural elevations reviewed by the ARB. He indicated that the ARB did not like the Thoraldson PUD design guidelines and wanted to throw them out. The ARB specifically asked that he model his building to that of the newest restaurant located in Chandler, Arizona as the design does not include franchise architecture. It was his belief that the Chandler design would be the most handsomely detailed building and would enhance the visual integrity of the area and yet remain consistent with the General Plan. He felt that the site plan would solve the existing traffic flow problems by opening up a right turn, right out movement on Cochrane Road. The design proposes a right turn in and right turn out that would align the entrance to the hotels to the rear and would go between the two restaurants. He stated that he met with Public Works staff member Scott Creer who suggests the site plan before the Council. He said that at the Planning Commission meeting of February 25, everyone reached an agreement on an interim solution. It was acknowledged that the entrance would conflict with the Caltran's area and that an encroachment permit would be required. A Planning Commissioner suggested that the driveway be moved over slightly, ten feet, to stay out of the Caltran's area and that when the encroachment permit is received, the driveway could be moved back to its correct place, minimizing any impacts. This resolution was approved by the Planning Commission.

Mr. Volley addressed the landscape buffer that was reduced to three feet in a small area. He is working with Caltran to secure an encroachment easement and to receive permission to beautify the corner to make it a real gateway entrance into the City. Heavy landscaping is proposed and that it would be maintained in perpetuity by In-N-Out Burgers for the City. He stated that he has heard that some individuals feel that In-N-Out Burgers would hurt some fast food restaurant volumes. He felt that In-N-Out Burgers complements other restaurants and that other fast food restaurant volumes would increase. In-N-Out Burgers would bring 50-70 new jobs, would be a good community fundraiser, participate in the child abuse prevention organizations, have a high standard of cleanliness and would develop a great looking facility. He informed the City Council that he disagreed with conditions 8f and 8g. If approved, he requested that the Council base its approval on the Planning Commission approval/recommendations of the project of February 25. He indicated that Ken Keller with the development team was also in attendance to assist with the application presentation.

Council Member Tate noted that Mr. Volley stated a lot about the In-N-Out Burger but that no mention was made of the other sit down restaurant.

Mr. Volley indicated that he has building elevations of the Applebee's Restaurant and that they conform architecturally to his building as well. He stated that he is in negotiations with them and that he is hopeful to sign a lease with them. He said that the Planning Commission understood his plight in trying to attract Applebee's to the site and having his hands tied. The Planning Commission recommended that the approval be for either Applebee's or a 5,000-6,500 square foot sit down restaurant on the site to give him the flexibility should Applebee's want to low ball him on rent before signing the lease. It would be his agreement with the City to sign a lease with Applebee's or a higher standard restaurant, indicating the he is talking to Chile's and other restaurants. He agreed with the condition that In-N-Out Burgers would not receive the building permit until the sit down restaurant is under construction.

Council Member Tate noted that the elevations contained in the Council packet are franchise architecture of Applebee's and that the elevations do not correspond to the In-N-Out Burgers' building.

Mr. Volley said that he found that in trying to attract a sit down restaurant to Morgan Hill, Applebee's gave him their standard proto type building and that they have minimum flexibility. He said that Applebee's did make some changes to confirm with the In-N-Out Burgers' building. However, they too said that they need to have their franchise looks. He said that one of the difficulties in attracting a national caliber, good chain restaurant is dealing with their identity. He indicated that a lease with Applebee's has been put together but that not all items in the lease have been agreed to. Therefore, the lease is not signed with Applebee's.

Mayor Kennedy requested that Mr. Volley address the economics/business aspects of this location. He inquired whether this would be a successful business venture should the Council approve the application this evening.

Mr. Volley indicated that he is assuming a minimum of \$5 million dollars in sales with the combination of two restaurants. This is based on In-N-Out Burger's experience in the past of a location in Gilroy and Livermore that have similar demographics and similar freeway counts. He was very confident of their

success at the proposed location. He said that Applebee's has looked to In-N-Out Burgers to pave their parking lot and install their site improvements in an amount of \$500,000. Applebee's is looking toward In-N-Out Burgers to pay for the assessment bond that is currently on the property of \$15,000 per year for the future, as well as to pay for city fees. He said that In-N-Out Burgers is prepared to find a restaurant and help them get started in order to bring a sit down restaurant to the City.

Council Member Sellers noted that it was indicated that the egress/ingress was moved to the west so that it is no longer an issue with Caltran as he was anxious that this gets completed before hand.

Mr. Volley said that the big challenge would be in the time delay involved in getting the approval for the encroachment permit from Caltran. Rather than to hold up the project, the Planning Commission and In-N-Out Burgers agree that on the interim, until In and Out receives the encroachment permit, he would move the driveway approximately 10-12 feet to the west and be just outside the Caltran's encroachment area. As soon as In-N-Out Burgers receives the encroachment permit, he would spend the money to move the driveway back.

Council Member Sellers said that ideally, it would be preferable to obtain Caltran's approval of the encroachment permit. He stated that he was comfortable with the location of the building for the In-N-Out Burgers, but felt that the sit down restaurant location could be moved closer to Cochrane without adverse impacts on parking. He inquired whether it would be possible to move the building closer to Cochrane.

Mr. Volley indicated that he spoke with Appleby's, Chiles and Olive Garden about the site plan and that they were all interested in having the building setback so that the parking was available. He indicated that individuals make a decision based upon seeing available parking. He indicated that Applebee's would not proceed with the site if there was any movement of the location of the building.

Council Member Sellers said that the Council could revisit the building location if the restaurant was any other than Applebee's

Mr. Volley indicated that he spoke with Caltran and that their initial reaction is that the encroachment permit is not a problem but that there is a process that he has to go through.

Council Member Sellers said that it sounds that the concern that staff has is that Caltran would only allow minimal landscaping. He stated that he would like to find a way, should this turn out to be the case, where In-N-Out Burgers is willing to install the landscape standards that the City would like to see. If Mr. Volley is in concurrence that the project not be held up because Caltran is requesting minimal landscaping, that the City work with Mr. Volley to try to get a different response from Caltran.

Mr. Volley indicated that George Nicholson, In-N-Out Burgers' representative and he met with Public Works staff member Scott Creer to start the process. Mr. Creer agreed to talk to Caltran. He has not heard that Caltran would not allow him to landscape the area appropriately or nicely. He has no doubt that they may not want trees in their property but felt that nice landscaping would be appropriate, especially if In-N-Out Burgers was to sprinkler, landscape, and maintain it.

Mayor Pro Tempore Chang inquired as to the hours of operation for the In-N-Out Burgers.

Mr. Volley indicated that the hours of operation until 1 a.m. during the week and 1:30 a.m. on the weekends (Friday and Saturday nights).

Mayor Pro Tempore Chang said that she has seen In-N-Out Burger become a teenage hang out as there is no place else for them to go. She requested that the City Manager request that the City's Chief of Police look into this concern.

City Manager Tewes indicated that he passed on Mayor Pro Tempore Chang's concern to Mr. Volley and that he is prepared to respond.

Mr. Volley indicated that he has not heard of any incidents of any activity at the Gilroy location. He requested that Mr. Toy check into this and that Mr. Toy confirmed that there was an incident in Salinas. The other In-N-Out Burgers being referred to by Mayor Pro Tempore Chang is a store located at the Eastridge Mall located at Tully and Capital. The In-N-Out Burgers is a part of a larger shopping center and that youth congregated there. In-N-Out Burgers contacted the property owner and the shopping center manager because the kids would move off the property onto the Safeway property. He stated that In-N-Out Burgers did not have the ability to deal with the situation. He stated that In-N-Out Burger has since made an agreement with the property manager, hired security and that this problem has not returned. He stated that In-N-Out Burgers has become pro active and is ready to deal with the situation should it arise again this spring.

Mayor Pro Tempore Chang indicated that the Council has always desired a sit down restaurant in this PUD. She understood that In-N-Out Burgers is promising an Applebee's, noting that a signed lease has not been secured. She indicated that staff members/Planning Commissioners informed her that Applebee's is asking for a few incentives from the City and that the City would have to give Applebee's so much money for them to locate in Morgan Hill.

Mr. Volley indicated that Applebee's has asked either the City to participate in reducing the fees. However, In-N-Out Burgers does not agree with this request. He said that In-N-Out Burgers will handle this internally as he does not believe that this burden belongs on the City. In-N-Out Burgers, as the developer, would pay the fees and attract either Applebee's or another restaurant chain that will pay the fees.

Mayor Pro Tempore Chang inquired whether Mr. Volley would return to the Council to state that nothing works economically for a sit down restaurant and that he would request the approval of another fast food restaurant in the PUD.

Mr. Volley stated that he would be embarrassed to return to the City Council and request a second fast food restaurant in the PUD. He felt strongly that he would be able to attract a sit down restaurant of the caliber that the City wants. He is prepared to close on the land deal and that In-N-Out Burgers would be making a substantial investment. If In-N-Out Burgers is unable to develop the site in two or three years, he would take a look at the situation at that time.

Mayor Kennedy noted that condition E (page 123) states that the sit down restaurant shall be under construction prior to the issuance of a building permit.

Mr. Volley stated his agreement to this condition.

Council Member Carr inquired whether In-N-Out Burgers has secured other agreements for landscaping with Caltran.

Mr. Volley responded that he was not aware whether In-N-Out Burgers has other agreements with Caltran but that In-N-Out Burgers has had a lot of interactions with them because other properties have been developed along the freeway. In-N-Out Burgers has improved their landscaping, removing dead landscaping and tree trimming in other jurisdictions but that he was not aware whether In-N-Out Burgers maintained the landscaping in other properties.

Council Member Carr stated that both the approvals that In-N-Out Burgers is seeking from Caltran appear to be important to this development. Should In-N-Out Burgers be unable to obtain Caltran approval, would there be a need to review the entire site plan? Would Mr. Volley be willing to come back and work with the City on a 27-foot encroachment on a 30-foot setback for landscaping and the drive aisle for egress/ingress?

Mr. Volley stated that he felt confident that this would be a win-win situation for Caltran, the City and In-N-Out Burgers.

Council Member Carr said that he would like to see the Caltran right of way landscaped and maintained. He expressed concern with the ingress/egress. He was pleased to see that Mr. Volley and the Planning Commission worked out an interim solution. However, he did not want to see an interim solution become a 10-20 year solution simply because Caltran would not approve the right of way. He felt that the City needs to find some assurance that if Caltran does not provide its approval, the City and In-N-Out will need to figure out what will be done for the long term. He noted that Mr. Volley mentioned that sit down restaurants he has spoken with are unwilling to consider moving the buildings forward as they would be afraid that customers would pass by if they do not see parking. He inquired whether this was an intuition restaurant owners had or whether a study was conducted that shows why someone would pull in and go to a restaurant.

Mr. Volley said that In-N-Out would agree to return to the City Council and discuss alternatives should Caltran not grant approval. He indicated that he did not query restaurant representatives further as to whether or not they had a study on patrons and their parking needs. He did hear more than once that it was important for individuals to see parking available to pull into restaurants.

Council Member Carr inquired whether the ordinance only applies to this applicant or would it apply to the property itself? Should the In-N-Out Burgers be unable to get a sit down restaurant to come along with them on this property, could In-N-Out Burgers sell the piece of property with the approval of a drive thru/fast food restaurant that would not be specific to In-N-Out Burgers?

Mr. Bischoff responded that the ordinance would apply to the property itself and that In-N-Out Burgers can sell the property and the land use entitlements. He did not believe that the Council could draft the ordinance where it could be specific to In-N-Out Burgers.

Council Member Carr inquired whether the ordinance could be drafted so that a timeline could be applied so that the land use entitlement would last for a certain period of time.

City Attorney Leichter responded that the Council could apply a specific timeline for the land use entitlement. However, she did not believe that the City could limit the land use entitlement to a specific business.

Council Member Sellers noted that Sections 4 and 6 make specific references to In-N-Out Burgers. He inquired as to what degree this precludes another fast food restaurant from operating in the PUD if the name is the same.

Mr. Bischoff noted that the Council has a copy of a precise development plan which shows in general what the building will look like. To the extent that another restaurant is willing to occupy a building that looks like an In-N-Out restaurant, that restaurant could take over the building. However, to change significantly from the architecture of the PUD would require an amendment to the PUD.

Jim Steward, 851 Cochrane Road, stated his support of In-N-Out Burgers as it would be an asset to the community as it is a first class company with superior product/services. In-N-Out Burgers would provide several jobs. He felt that In-N-Out Burgers is a type of fast food restaurant that is non existent in Morgan Hill. Everyone who works in the Cochrane Road area commutes or lives in the area does not have the time nor money to prepare meals or to patronize a sit down restaurant or visit McDonalds. If In-N-Out Burgers is not allowed to build on this property, he felt that it would be years before anything is developed and would hamper future development in the Cochrane area.

Stephanie Martin, 1245 Diana Avenue, felt that In-N-Out Burgers or Applebee's would provide a variety of foods. Having an In-N-Out Burgers in Morgan Hill would benefit the community by providing jobs and generate tax revenue. This would give local residents who are unemployed a better opportunity to get a job. She stated her support of the proposal before the Council.

No further comments being offered, the public hearing was closed.

Council Member Sellers indicated that the primary issue of concern was the agreement for two sit down restaurants. In looking at the issue further, he felt that the premise of the agreement evolved toward the end of a long discussion of the PUD. As the Planning Commission discovered in their review of the layout, there were significant concerns about the ability to site two sit down restaurants on the site. In looking at the limitations, it precluded what was originally thought would be allowed in the PUD. He felt that this proposal, as it has evolved, has done what it can. The second concern that everyone has addressed deals with circulation that turned out to be a much larger issue that was not addressed sufficiently. He believes that this development would rectify and improve circulation through the entire section. He was pleased to hear that a public subsidy is not being requested as it was thought that this

should be a viable site and that it should not be publicly subsidizing. He felt that all these concerns have been addressed. He requested that an effort be made to move the building forward as the project develops. He further recommended that the Economic Development staff continue to be involved with In-N-Out Burgers to look at alternative sit down restaurant partners should Applebee's not locate within the PUD, attracting the highest and best use for the remaining facility. In reviewing all the issues over the last few months, he was pleased that the Council held firm initially. He expressed concern that the City would develop a Gilroy syndrome where Morgan Hill is adding a new business that is merely taking tax revenues from an existing business. In looking at the market share for In-N-Out Burgers, he felt that In-N-Out Burgers would compliment the existing McDonalds Restaurants. He felt that the egress/ingress issue would help rectify the current circulation situation. Therefore, he was comfortable supporting the proposal this evening.

Mayor Kennedy stated that he supported the original proposal based on the assurance from Mr. Volley and In-N-Out Burgers would bring a sit down restaurant onto the adjacent site. He indicated that he would be supporting this application for several reasons. He felt that it was important that the City move forward with a project that would show the community and the Cochrane Business Park area that the City is truly open for business and that the City is willing to bring in new business. He felt that there was a desperate need for good sit down restaurants and that it was his belief that In-N-Out Burgers would follow through with their commitments. He felt that it was important that the City not send a negative message to the business community as it is hard to shake off a negative image of turning down projects. He indicated that he is still hearing negative comments about how difficult it is to get projects approved in Morgan Hill. In times of economic uncertainty, he did not believe that it was a time to turn away good businesses, particularly a business that could bring \$60,000-\$70,000 in revenue a year. He also felt that there was synergy in this location with In-N-Out Burgers and a sit down restaurant to the adjacent hotels and businesses. Having hotels where there is an adjacent restaurant may also influence a person's decision to stay at a particular motel if there is a nice restaurant nearby. He noted that the City's hotel tax has dropped significantly and that the City needs to help bolster up this side of revenues. He stated his support of the project.

Council Member Tate stated his support of In-N-Out Burgers at this location. However, he supports staff recommendation because they are upholding the General Plan, specifically; the gateway location and that development should meet certain standards. It was his belief that Mr. Volley did a wonderful job of trying to work with the City and achieve gateway standards. In looking at what is being proposed, there is a big sea of cars between the restaurants and Cochrane Road in a gateway location. He was adamant that the restaurants need to be pulled forward. He felt that the City would want a gateway location that would enhance In-N-Out Burgers, a sit down restaurant and other uses if they can confirm to the standards. He would like to support the proposal with the understanding that the buildings be moved forward and that the architecture for the sit down restaurant be adaptive or compatible to that of the In-N-Out Burgers' design. He indicated that his third element of concern is the whole question of landscaping, noting that it was light. If there is not to be a compromise on the parking in front, maybe landscaping can be used throughout the parking lot to soften the impacts of the vehicles. He said that he would support the sit down restaurant even though it violates what was originally desired in this gateway location but felt that more work was needed to meet the intent of the General Plan on

this gateway location. He felt that Mr. Volley has come a long way and that he would like to work a little bit more to get to where the PUD should be.

Council Member Carr stated that he concurred with a lot of Council Member Tate's comments. He felt that there were ways that the City and applicant can work with Council Member Tate's concerns and still be able to move forward this evening. He commended Mr. Volley and the In-N-Out Burgers' representatives for the work that they have done. He agreed that the proposal has come a long way but that there were still some things that need to be worked on. He felt that the issues that Council Member Tate raised are very difficult issues. He noted that the Council approved a general plan and that the Council needs to find ways to support the general plan as best as possible. He stated that he too wants to support economic development and business improvements within the City but not at the expense of the City's general plan or best planning practices for the City. He felt that there were ways to accomplish these goals together. He continues to have the concern about the PUD. Perhaps the requirement for two sit down restaurants were hastily added to the end, noting that he was not a part of the approval of the original PUD. He stated that the community was promised something and that he was not sure whether citizens understood what may have happened to the PUD. If the Council is going to change the PUD from what the community expected of two needed sit down restaurants to one sit down restaurant and one fast food restaurant, there was some value to this. He felt that there are several things that In-N-Out Burgers has identified that the City would be getting that add value: 1) working toward improving the traffic circulation of the entire area; and 2) the landscape plan, with an agreement with Caltran, is important and could improve the entire area/community. He would agree to consider the value of changing the PUD if work can be done on the other issues. The issue of the location of the buildings is important to him as well. He understood that the individuals that Mr. Volley has spoken with are professionals and do this for a living. However, he needs facts to back up the statement that parking is needed on the street side for the business to be economically successful.

Council Member Carr said that the City went through great lengths to move the Chevron Station and their building up to the street and that the City was successful in doing so as this is a busy gas station. He indicated that the City has also had this conversation with other businesses as well. He stated that he was not ready to give this issue up simply because real estate individuals have stated that they will not get the business they need. He expressed concern that the response he received from staff when he asked whether the ordinance is tied with the property or with the developer. He stated that he believes Mr. Volley when he states that should he not be able to get a sit down restaurant that he would be too embarrassed to return to the Council and request an amendment to the ordinance. From a business sense, In-N-Out Burgers would not be able to pull building permits until all conditions are satisfied. This would result in a piece of property being a negative for In-N-Out Burgers and that it would be sold. If so, it could be sold to any fast food chain that wants to locate a fast food restaurant at this corner. He stated that this would be unacceptable to him as the Council has heard great accolades about In-N-Out Burgers, noting that Council Member Sellers addressed the market and that In-N-Out Burgers is different from the other fast food restaurants in town. Therefore, the City would not be approving a competing business. He would not like to see this agreement or the property sold off to another developer for another fast food. Therefore, he would like to find a way to tighten up this language/requirement. He clarified that with all of his concerns this does not mean that he is not ready or willing to move forward this evening. He felt that these issues could be addressed this evening and

move forward so that In-N-Out Burgers has an agreement in hand to be able to fulfill the other requirements such as a sit down restaurant that the City would like to have accomplished. He noted that City Attorney stated that the ordinance cannot be tied to a specific business operation but that it can be tied to a timeline.

Council Member Tate did not know how his concerns would be addressed by modifying the ordinance this evening.

In response to Council Member Carr's question, City Attorney Leichter stated that this is a precise development plan and that it would be difficult to move forward with the ordinance without the site plan itself.

Mayor Kennedy said that he has seen several projects where the City required the project building to be moved forward. He stated that he has been dissatisfied with the results such as the Walgreen's Drugstore. This proposal was presented to the Council with a lot of landscaping in front but based on the fact that the City insisted on the building close to the street, the City ended up losing most of the landscaping. He felt that the City ended up with a building in a location that does not look attractive. He felt that there were ways to address the open lot with the use of berms, trees, and landscaping to address concerns. He was willing to work with the Council in such a way to make the project work. However, it was his gut sense that he does not see the value of moving the buildings forward. He did not find the Chevron building as being any more attractive than it would have been pushed back. He said that certain things work for businesses and certain things do not work. When one interferes too much with the design and layout, you can interfere with business realities and what works for these businesses.

Mayor Pro Tempore Chang noted that this is a gateway location and that the original PUD required two sit down restaurants. She noted that a fast food restaurant wants to move forward with a promise of a sit down restaurant, noting that the project is in the same place it was seven months ago. She stated that she is willing to work with everyone and to work on a compromise. She did not recommend that the City cut corners and that the Council adhere to the City's general plan. She has a sense that the Council is ready to move forward if the details are met to most Council Members' satisfaction. She recommended that the project be approved in concept and that it be referred back to staff in order to address Council members' concern.

Council Member Tate said that he would like to approve the proposal this evening but that he did not know how the Council can proceed as approval would be of a specific site plan. He stated that he would like to have all Council members agree to tighten up the approval versus having a split vote on whether it agrees with the specific ordinance.

Council Member Sellers inquired whether the Council has any latitude that it can impose to state that it would like the building moved as far forward as possible and that staff work with the applicant to accomplish this requirement.

Mr. Bischoff stated that unless the Council is more specific as to its requirement of the location of the building, the building would be constructed as currently shown. He said that it was his experience that applicants always want their buildings setback further back and want the sea of parking in front.

Council Member Sellers said that he did believe that the building should be sited on the street or as close as Chevron is. He felt that most of the concerns raised by Council members this evening would be addressed through the ARB process and would be addressed in the ordinance. He would like to figure out a way where the City could provide some latitude regarding the location of the buildings in order to move forward with the application this evening.

Mr. Volley stated that there was not another fast food chain that could afford or want to undertake this project. He would agree to a two-year limit on the approval to find a sit down restaurant. As an alternative, the Council could indicate that a unique, non duplicative fast food restaurant chain could be approved. He said that the landscape plan calls for mature trees throughout the parking fingers in front of the building and calls for a 3+ foot berming in front of the building in the 30 foot landscape area. Therefore, the City would not see a sea of parking but would see a well landscaped perimeter and trees. He stated that his company has spent over \$175,000 on the preparation of different plans, working with staff, returning to the Council and securing extensions with the property owner. He felt that he has presented the Council with a real project. However, In-N-Out Burgers does not have an endless pocket and cannot go much further. He said that there are multiple problems with placing the building up front. By putting the buildings up front, individuals would be walking in front of the trash enclosures or the trash enclosures would be placed out on the street. The second problem is that individuals would come into the site with a building upfront and would not be able to see other cars making movements and becoming an unsafe situation. He felt that placing buildings upfront works in urban, downtown locations where there is on street parking and there is pedestrian traffic. He noted that there is no residential development nearby and that it is all vehicle traffic with the exception of individuals walking from hotels to the restaurant. For safety, convenience and operator safety, it does not make sense to site the buildings up front.

Mayor Kennedy indicated that he met with Mr. Volley earlier and that he mentioned his opposition to condition 8f, the interim access driveway, based on the necessity and timing for the installation of the interim access driveway to be determined by the Director of Public Works.

Mr. Volley indicated that the Planning Commission made a recommendation that he move the ultimate driveway location over westward approximately 10 feet on a temporary basis to get out of the Caltran's encroachment area until he receives the permit. He concurs with this recommendation as it is a great solution. When he receives the Caltran encroachment permit, the driveway could be moved 10 feet back with no substantial impact. He noted that condition 8g conditions him to not start any project until he has the Caltran encroachment permit. Thereby delaying the project for six months to a year and making the project economically infeasible. He said that this problem was solved by the Planning Commission's recommendation to move the driveway over 10 feet outside of the encroachment in order to move forward with the project. Should the Council approve the Planning Commission recommendation, Conditions 8f, or 8g would not be necessary.

Mr. Bischoff agreed with Mr. Volley's comments that should the Council wish to reword condition 8f it would be to state that the interim driveway would be located 10 feet to the west of the ultimate driveway location. This would be consistent with the direction and the intent of the Planning Commission. Also, the first clause of condition 8g nullifies the need for condition 8f and that the elimination of the first clause would be appropriate. Should the Council amend these conditions, there is no guarantee that Caltran would approve the encroachment permit and that there would be a 10 foot offset.

In response to Council Member Sellers question, City Attorney Leichter stated that should the Council so be inclined to include a timeline requirement, it would be an expiration of the ordinance. This could be addressed in a new section 5 that states that of the following preconditions do not occur; the ordinance shall expire in its own terms, moving the other sections down in number. She pointed out that Section 8d in the defense and indemnity, makes the project subject to certain conditions, including defense and indemnity. It was the contemplation that the ordinance would not expire. She said that there could be claims which the City would request defense and indemnity for after the expiration should the Council time the ordinance out. She requested that Section 8d continues.

Mayor Pro Tempore Chang inquired whether anything can be done to ensure that Caltran's approval of the encroachment of 10 feet can be achieved.

Mayor Kennedy responded that should the Council eliminate the first clause of paragraph g it would state that the applicant shall secure approval from Caltran for construction.

City Attorney Leichter clarified that paragraph 8g pertains to the building permit for the sit down restaurant. Should the Council strike the first clause, the applicant does not need to obtain the encroachment permit until later on in the process.

Mr. Bischoff indicated that the Council may wish to add additional language to section 8g of the ordinance that states that should within a year of opening both restaurants that this matter can be returned to the Planning Commission for consideration of alternative traffic mitigations as necessary. He stated that should the applicant not be able to secure an encroachment permit from Caltran and it does not become a problem, the City does not have to do anything. However, if it becomes a problem, it may give the Council the latitude to look at and impose other requirements for mitigations of traffic impacts. He said that traffic problems are to be determined by the Chief of Police.

Mayor Pro Tempore Chang inquired where the permanent landscaping would be installed should Caltran approves landscape installation in their right of way.

Mr. Bischoff informed the Council that the public works department believes that Caltran approval to landscape their right of way should be easy to obtain. He was not certain how certain public works staff felt that the easement for the driveway was obtainable from Caltran. However, they believe that the easement to landscape should be easy to obtain. Should Caltran refuse to grant the easement to landscape, the gateway would suffer.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *Council Member Sellers made a motion, seconded by Mayor Kennedy, to **Waive** the Reading in Full of Ordinance of the Planning Commission Recommendation approving two restaurants with the following: modification to Section 8g as suggested by staff to stipulate that “~~Prior to the issuance~~ **Within one year of the issuance** of a building permit for the sit down restaurant...,” adding a second sentence that would reference the specific mitigations should Caltran not approve the easement; the addition of a new Section 5 that references expiration of the ordinance within two years; and modification of Section 8d such that the ordinance would continue past the expiration period.*

Council Member Tate stated that he has raised concerns and that they have been ignored in the motion. He expressed concern about the landscaping, the location of the building as well as franchise architecture. He said that the applicant made some points and that he was willing to sit down and discuss these points with the applicant. He noted that the applicant claims that the landscaping would be robust but that he questioned this. He felt that a lot more could be done with the landscaping, noting that it does not meet the 50% requirement around one of the buildings. He felt that more can be done with the landscaping in case the easement from Caltran cannot be obtained. He was not convinced that the buildings could not be pulled forward. He said that he would not support the motion even though he would support bringing In-N-Out Burgers to this location. He felt that the City needs to do more work to get protections for the gateway areas.

Council Member Sellers said that in looking at the ordinance he sees a 40 foot landscape buffer being referenced and that the landscape area would be supplemented by the adjacent Caltran right of way landscaping. He agreed that the design elements need to be dealt with. However, he reads that the applicant is to comply with the City-wide PUD architectural standards to the greatest extent possible. He said that he would like to give the ARB the latitude to work out the details and mitigate the franchise architecture. He felt that the ARB would mitigate the franchise architecture based on the ordinance, their past performance and the comments expressed by the Council this evening. He felt that it all comes down to a Council comfort level to see that the remaining issues are addressed. He stated that he concurred with the Mayor's comments as well as the applicant's comments regarding the building setback. He stated that was comfortable with the proposed location of the buildings.

Mayor Kennedy noted that the proposal was approved by the Planning Commission on a 6-1 vote and that the ARB has approved the proposal, discovering the In-N-Out Burgers construction in Arizona, noting that the applicant has agreed to perform this type of architecture.

Mr. Volley indicated that he has met twice with the ARB, providing them with new landscaping plans and the Chandler building elevations and that these plans were approved by the ARB.

Associate Planner Tolentino indicated that this project would go back to the ARB for final approval as they only provided preliminary comments.

Council Member Carr said that as part of this ordinance, the Council is granting the ARB the authority to redefine the architectural theme of the Thoraldson PUD. He inquired at what point the Council would be seeing the change to the Thoraldson PUD.

Ms. Tolentino pointed out that the elevations presented to the Council this evening would be close to what the ARB has expressed acceptance to. Even though the ARB would be redefining the Thoraldson PUD, they are redefining it to allow for the elevations presented to the Council this evening. Therefore, there would not be significant changes to the elevations. She indicated that the PUD would go back to the ARB for final approval and that this would be the final stage in the approval process.

Council Member Tate said that he would be more comfortable in having the plans return to the Council after approval by the ARB with the ARB having the input being provided by the Council this evening.

Mr. Volley indicated that he is due to close escrow in 15 days. He indicated that the ARB has approved the site plan and the location of the building landscape plans. The ARB requested that he come back in order to make final changes to the hues and colors of the building and review of the landscape plans one final time. This was also the case with the Planning Commission.

Mayor Pro Tempore Chang stated that she would like to see a comfort level in place for everyone, including staff.

Mr. Volley indicated that his primary contact was with Ms. Tolentino, the ARB, a subcommittee and the Planning Commission. Therefore, he has been working with everyone. He felt that Mayor Pro Tempore Chang feels a sense of discomfort because changes have been made to the PUD guidelines and that when these changes went to the ARB; they threw out all of the changes. He indicated that the ARB wanted to start over with a new plan. The original site plan showed his building in another location. Staff highly recommended that the building be moved to the location it is shown at this time. He said that he has jumped through every hoop to give the City what it wants and to develop this piece of property. He felt that everyone acknowledges that two sit down restaurants do not work and that the site plan that staff had in the PUD shows a dead end parking lot. The access to the site does not work as you cannot circulate to the two hotels, two or one sit down restaurant, an In-N-Out Burgers and Chevron, all making left turns. He has spent the money and time on a traffic engineer to conduct a study to make a recommendation to fix the circulation problem for the benefit of everyone. He said that this has been the most difficult project that his company and In-N-Out Burgers have ever worked on. He stated that his company is willing to bend over backwards to spend a lot of their money to bring in a sit down restaurant to the PUD. He felt that there has to be some incentives to bring in a certain type of markets in. He is willing to be the incentive to bring a sit down restaurant. He felt that the property would sit for a long period of time if he is not allowed to develop it. He understood the economics of what restaurants will pay.

Mayor Kennedy stated that this project has been ongoing for a long time. He agreed that the site would sit empty for a long time if not allowed to develop. He said that this was a good project. He stated that he has been told that one reason the City is having difficulty recruiting sit down restaurants is because the first one has not come in. He felt that the City may need to take some risks to bring the first sit down

restaurant in. He agreed that not everyone would be satisfied but that everyone has tried to make this project work. He felt that the City needs to allow a certain amount of risk in order to make the project work. This risk will allow the City to attract other restaurants.

Council Member Carr inquired whether the motion could be amended to allow the PUD to return to the Council following review by the ARB to attain a greater comfort level for the Council.

Council Member Sellers noted that Mr. Volley has stated that this has been his most difficult project. He felt that the City has pushed as much as it can and felt that the City is on the verge of reinforcing to the rest of the world that this is a difficult town to do business in. He felt that there has to be some faith given and agreed that there were some loose ends to resolve. However, he felt that the loose ends were minor relatively to the overall scope of the project. He requested that the Council vote on the motion on the floor and that the Council talk through the approval, if necessary. He did not believe that it made sense to have the applicant return to the Council as it may jeopardize the project in terms of closing escrow. He did not know what goal would be achieved if the application was continued other than to get another chance to approve the project if all the details have been worked out.

Council Member Tate said that it was his goal to preserve the integrity of the General Plan. He said that he would be willing to do the work necessary to address them over the next few weeks. He said that he could not move forward with the approval process this evening just because there is an ultimatum on a date.

Mayor Pro Tempore Chang stated that it was her belief that Council Member Carr and her concerns have been addressed. She would like to address Council Member Tate's concern. She recommended that this project be brought back to the Council in two weeks and allow the applicant to work with Council Member Tate and staff. The time would allow compromises to be considered.

Council Member Tate said that he would like to have his three areas of concern addressed: landscaping, understanding what can be done to alleviate the location of the building(s), and the architecture for the sit down restaurant.

Mayor Kennedy inquired whether having the Council spend another week working with Mr. Volley on this issue would work within his schedule.

Mr. Volley stated that it was his understanding that he received ARB approval of the site plan and the landscape plans. The only challenge to the landscaping, other than the parameter of the landscaping by the thru lane, is around the building and that the only reason he cannot include additional landscaping on the building is because of the leaning roof that covers the patio. He said that landscaping cannot be planted in this area because sun does not shine in this area. He inquired if the meeting would be with the ARB and a Council subcommittee within the next week?

Mayor Kennedy recommended that a meeting with Mr. Volley include representatives from the ARB and Planning Commission along with a Council representative.

Mr. Volley stated that he would be willing to work with the City and agree to a one week continuance.

Mr. Keller stated that he has personally worked on this project since day one and that he has moved the buildings, landscaping and details on the architecture a number of times, including helping with the Applebee's restaurant. He indicated that Mr. Volley was able to convince the Applebee's representative to make minor changes to the building. He took it upon himself to make changes to Applebee's building based on what was provided and that the Applebee's representative was amenable to the changes. He felt that In-N-Out Burgers has made an attempt to address the franchise architecture for both the In-N-Out Burgers and the Applebee's building. He has sat down with the ARB twice, indicating that the first submittal to the ARB was based on what the Planning staff asked him to do. The ARB stated that they were not comfortable in seeing the elements projected in this project as something that would be projected as a Gateway element. The ARB felt that the elements of the hotels that he was supposed to follow were substandard and that they felt that the roof materials, colors, finishes, etc., were not elements that they wanted to see in the Gateway. It was his belief that this was because this was out of their control at the time and that it was not something that was strictly enforced at the time. He felt that the ARB now has an opportunity to address this. The ARB took it upon themselves to go to their website and download images of In-N-Out Burgers from all over the area. The ARB specifically picked the store from Chandler, Arizona and stated that they would like to see a design along these lines. As far as going back to the ARB, the only condition that he was sent forward with is to make minor modifications to the palette of landscape materials to be used on the site as well as the colors and materials to be used on the building. The ARB was fine with all other aspects of the project. Therefore, he did not understand why the project would need to go back to the ARB and then return to the City Council.

Council Member Sellers called for the question, noting that he incorporated three changes to the ordinance that he was already uncomfortable with to address some of the Council Members' concerns. He felt that the remaining concerns would be addressed by the ARB and in going through the final process. He felt that the Council needs to move forward with the application this evening.

Vote: *The motion **failed** 2-3 by the following vote: AYES: Kennedy, Sellers; NOES: Carr, Chang, Tate.*

City Manager Tewes inquired whether it would be appropriate to have the motion on the ordinance next week if it is the Council's desire to have the ordinance return to the Council next week.

Council Member Tate inquired whether action on the ordinance could be continued to next Wednesday, April 30, 2003.

City Attorney Leichter indicated that the Council could adjourn this item to April 30 for final approval.

Action: *Council Member Carr made a motion, seconded by Council Member Tate, to **Waive** the Reading in Full of Ordinance of the Planning Commission Recommendation approving two restaurants with the following: modification to Section 8g as suggested by staff to stipulate that "~~Prior to the issuance~~ **Within one year of the issuance** of a building permit*

for the sit down restaurant...,” adding a second sentence that would reference the specific mitigations should Caltran not approve the easement. The addition of a new Section 5 that references expiration of the ordinance within two years. Modification of Section 8d such that the ordinance would continue past the expiration date. The ordinance is to come back to the City Council for approval on April 30, 2003.

Mayor Kennedy requested clarification on what will take place during the interim week.

Council Member Carr indicated that he heard members of the City Council wanting to meet with Mr. Volley to get a better understanding of the project. He would like to give the Council Members the opportunity to do this.

City Clerk Torrez requested clarification of the motion and inquired whether it was the intent of the motion to have this item return for introduction of the ordinance. She noted that adoption of the ordinance would need to occur at a regular meeting of the City Council.

Mayor Pro Tempore Chang questioned why the Council needs to introduce the ordinance this evening when some of the Council Members were not comfortable with it. She felt that it was the intent to postpone this item to allow Council Member Tate the opportunity to get a sense of comfort.

Council Member Carr stated that he did not want to place a delay on the project, indicating that it sounds that a one week delay is as far as Mr. Volley would agree to. He wanted to respect Mr. Volley’s time schedule.

Council Member Carr indicated that it was the intent of his motion to table introduction of his motion to April 30, 2003.

City Manager Tewes clarified that should the ordinance be introduced this evening, the ordinance would be brought back for adoption on May 7, at any event.

Council Member Sellers recommended that the ordinance be introduced this evening as this would still afford two weeks to address Council concerns, noting that adoption cannot occur until May 7.

Council Member Carr noted that there are members of the City Council who are uncomfortable with ordinance introduction this evening. If the final adoption of the ordinance would occur on the same date, the Council can give those members on the City Council the opportunity to be comfortable with the ordinance, and that he would like to respect this.

Vote: *The motion to table the first and second readings of the revised ordinance, as amended, until April 30, 2003 **carried** 4-1 with Council Member Sellers voting no.*

Mayor Kennedy requested that Mr. Volley meet with Mayor Pro Tempore Chang and Council Member Tate to discuss the concerns that they have to see if there was anyway that these can be addressed. This item would return to the City Council on April 30, 2003 for a vote.

City Manager Tewes said that in the intervening week, staff will prepare the draft ordinance along the lines of the motion. This will afford the Council the opportunity to review the amended ordinance language in front of it at that time.

Council Member Sellers stated that he wanted to make sure that the next time that the Council starts talking about economic development, that it keeps in mind this two hour discussion. He said that the Council wonders why it does not get more businesses that want to locate in Morgan Hill.

Council Member Carr felt that if economic development is a Council concern that the Council needs to address these issues in the General Plan. He felt that the policies contained within the Council adopted General Plan are blocking PUD, causing problems for staff and the Council. If the Council really wants to address this issue, he felt that the Council needs to consider revisiting some of the General Plan policies so that the Council is not faced with these problems in two hour meetings. What is being asked of the Council is to change the requirements contained in the General Plan that the entire Council supported.

Council Member Sellers recommended that the City Council consider item 16 at this time.

Action: *It was the consensus of the City Council **to consider** agenda item 16 at this time.*

City Council Action

16. COMMUNITY AND CULTURAL CENTER OPERATIONAL POLICIES AND PROCEDURES UPDATE

Recreation and Community Services Division Manager Spier presented the staff report.

Mayor Kennedy stated that he has worked with several groups who are working on various fundraising events. He felt that the report addressed the issues raised (e.g. insurance). He felt that staff was on the right track and that he supports what staff is recommending.

Council Member Sellers said that concerns raised over the past few months come from vendors who want lead time, the insurance issue, and the rates. It was his hope that vendors and others would realize that the Community and Cultural Center is a unique facility. He felt that the City has outstanding staff throughout the entire Parks and Recreation Department, particularly at the facility. However, it is a different kind of staff than you might see in other venues or competitors. He wanted to get a sense from staff on how the City is dealing with individuals and whether staff is following up aggressively with individuals for the use of the facility.

Ms. Spier said that if the City can become more process friendly and become a one shop stop that would help people make decisions. Staff is finding that individuals want to know the bottom line as to cost and whether the facility is available and that staff finds it difficult to provide these answers. The City has a community that is testing the grounds and shopping for a facility to use. She said that staff has made

some internal reassignments among staff. She indicated that the center is being used quite a bit and continues to grow. Staff is trying to attract it many areas but that staff is finding that it is not as competitive as it could be without some of these processes. She stated that staff would like to suggest negotiating with one security company as this would provide security for city staff as well as a way to monitor users.

Council Member Tate noted that staff is recommending that the City pursue a single insurance that the City would provide. He understood that there are some non profit organizations that have to provide their own insurance. He inquired whether this was still an option.

Ms. Spier indicated that at the last Council meeting, staff was directed to look at two agencies that could possibly fund the facility as an insurance holder. City staff is filling out the application so that the facility becomes its own insurance holder. Currently, staff is processing the event where the end user/group would have to provide additional insurance through the City's company or their own homeowners insurance. Since the last Council meeting, staff is receiving kick back from insurance companies who are not willing to include the primary non contributing language in homeowners' insurance policies. Therefore, three private users had to come back because their homeowners insurance company refused to add this language. She said that the Council may wish to seek City Attorney advice as to the risk the City would take if the City omits this language.

Council Member Tate stated that there are organizations that already have their own blanket insurance company for any events that they hold. To have them be required to get the City's offered insurance policy would require the non profit organization to pay a lot of extra money that they would not have to pay because the organization is already covered.

Ms. Spier said that the organization can go back to their insurance company and provide the City with the additional language.

Finance Director Dilles said that if a non profit already has its own insurance, the question is why they should be paying to buy into this other program that the City might get. He said that if the City is able to find a blanket liability policy that covers the entire facility and any activities taking place, the City has to find a way to cover these costs. He said that staff discussed spreading this cost across all the users and that the fees would recover these costs. He felt that it could be possible to have a two step fee but that some of Ms. Spier's recommendations are along the line of simplifying the process and not have a lot of extra fees. He recommended that a packet be put together that includes insurance and that the non profit organizations would not be buying insurance, per sea, as the City would already have in place for events. On the other hand, if the City is not able to secure one of the blanket liability policies, the City would be back with buying individual policies and that the non profit agency would not be required to purchase additional insurance. He informed the Council that ABAG is stating that the City's insurance may not be insurance.

City Attorney Leichter informed the City Council that one of the reasons that the City has primary non contributing requirements is because if there is an accident, the person injured will sue both the party and the City. A court may find that both have joined in several liabilities. She said that the primary non

contributing language states that the insurance of the party holder pays first and that the City will not contribute if it is a joint and several liabilities. This puts the City's insurance in a position where they take a back seat during litigation and that the other insurance litigates the matter. On the issue that Council Member Tate raised, she did not care where the insurance comes from. If a non profit has sufficient assets to sign the indemnification clause and has sufficient insurance to meet the City's requirements, this would be acceptable if they add the City as an additional insured. She said that she and the Finance Director need to discuss whether non profits should be allowed to choose between providing their own insurance and coming under the City's umbrella policy.

Mayor Kennedy noted that many homeowners' policies do not contain the primary non contributing language as this is a unique and special requirement.

Recreation Supervisor Boss indicated that the City has had three separate insurance companies tell the City that they could not provide the City primary non contributing language. It was her understanding, in speaking with several insurance companies that they all have to file with the State of California their insurance policies. They do not have the right legally to change language in a policy. She stated that staff spends numerous hours dealing with this issue on every rental that requires insurance and that the City has yet to receive from the user group what staff has requested in terms of insurance. She said that staff has made exceptions at the last minute, receiving insurance information but that it has not met with the criteria specified on City forms.

City Manager Tewes stated that insurance requirements make it difficult to rent the Community and Cultural Center. If it is the goal of the City to maximize the use of the facility, he stated that he is willing to accept more risk but understood why the Council many not want to.

Mayor Kennedy stated that he is willing to accept more risk. He stated that it was his understanding that the City was having difficulty getting someone to provide insurance.

Mayor Pro Tempore Chang said that it was her recollection that the Council was pursuing a blanket umbrella liability insurance of some sort.

Mr. Dilles said that staff is still pursuing a blanket umbrella liability insurance, indicating that he is pursuing two leads to obtain quotes on insurance costs to see it is affordable.

Mayor Pro Tempore Chang inquired whether it would be possible to receive both quotes and the different quotes that staff has in a month's time. The Council can review the insurance proposals/quotes and make a selection.

Council Member Sellers said that he was comfortable with an increased risk, noting that the City may have other options as well. He felt that by the time the Council gets to the public hearing there will be resolutions to this issue.

Mayor Pro Tempore Chang said that she supported a hassle free application packet. She inquired whether the City's package eliminates some of the hassle factors and is becoming hassle free.

Ms. Spier said that the City's package would eliminate some of the hassle factors (e.g., security issue) but that it does not address the insurance issue. She indicated that she is proposing an event coordinator assistance program in order to provide end users with a one stop shop.

Council Member Carr stated that it was his hope that the Council realizes that it needs to accommodate a wide range of needs and understands the different issues that may come up. He indicated that he has concerns regarding the new operating hours and staff's concerns about them. He is not suggesting that they be changed at this time but that six months from now, the Council may want to revisit the hours of operation. He appreciated the changes proposed with the kitchen use. He said that he too is willing to accept a greater range of risk when it comes to liability to accept those acceptable risks and allowing the City to become the judging factor versus some other body.

City Manager Tewes requested that the Council express some views about accepting more risks and how it would like to proceed on the insurance issue. One approach would be to allow insurances to not include the specified language. An alternative recommendation is to require the specified language through the insurance that is provided by individuals through the homeowners insurance or separate insurance.

Action: *It was the consensus of the majority of the City Council that it is willing to accept a higher level of risks and be willing to accept insurance policies without primary none contributing clauses. The Council is also willing to accept other insurance modifications, as necessary, to the City's standard policy in order to accept more risk. These are to be reviewed on a case by case basis until staff obtains the quotes from the two insurance companies.*

Action: *It was also the consensus of the City Council to **Direct** staff to schedule a public hearing for late June to review changes to the current rental rates.*

Redevelopment Agency Action

OTHER BUSINESS:

13. DRAFT ECONOMIC DEVELOPMENT STRATEGY

Director of Business Assistance and Housing Services Toy presented the staff report and highlighted out some of the revisions to the draft Economic Development Strategy.

Agency Member Carr stated that the Economic Development Subcommittee wanted to present the information as soon as possible to the Council and have some time later on to discuss the draft strategy. He noted that there are other groups in the community who would like to review the draft strategy as well.

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Directed** staff to circulate the Economic Development Study for comments, and **Scheduled** the Study for discussion on May 7, 2003.*

City Council Action

OTHER BUSINESS:

Action: *It was the consensus of the City Council **to consider** item agenda 15 at this time.*

15. COMMUNITY INDOOR RECREATION CENTER REVIEW OF PROGRAMMING SPACES, BUDGET, AND PROJECT SCHEDULE

Deputy Director of Public Works Struve presented the staff report. He requested that the Council appoint a Council subcommittee to work with staff on the items addressed and to appoint a committee chair for the subcommittee. He said that staff would like to turn around recommendations within 60 days.

Council Member Sellers recommended that the Council provide preliminary thoughts this evening and that a Council subcommittee be appointed. The subcommittee is to work through the issues, returning to the Council as decisions need to be made.

Mayor Kennedy felt that the identified schedule was too long. He suggested that the subcommittee look at comparable time schedules for other similar projects to obtain realistic ideas of comparable schedules. He said that the City is finding with the aquatics center that the cost of Leeds is extensive. He agreed that a gold Leeds standards would be too high. He suggested that the subcommittee take a look at this as well to see what the City can do to meet the intent without having extremely high costs. He indicated that he has received requests from Council Members Sellers and Tate and Mayor Pro Tempore Chang to serve on the subcommittee. In reviewing an updated list of Council committee assignments, he noted that Council Member Tate has a heavy work load in terms of committee assignments. He recommended that the Council appoint Mayor Pro Tempore Chang and Council Member Sellers to this subcommittee to balance out the committee assignments. He said that it is his personal policy to give the Mayor Pro Tempore the opportunity to serve on committees as first choice.

Council Member Sellers said that early in the process, it got derailed because Mayor Pro Tempore Chang recommended that the indoor recreation center be located in a different part of town and go in a different direction. He inquired whether Mayor Pro Tempore Chang was comfortable with the direction that it is now going and that the Council is on track. He noted that there was Council discussion about moving the indoor recreation center to Condit Road and wanted to confirm that this was no longer being entertained.

Mayor Pro Tempore Chang felt that the Council was on track. She said that her concern at the time was attributed to the architect. She stated that she was assured by Council members that the architect

selected was the right one for the project, including architect Chuck David. She said that she offered a suggestion to locate the indoor center on Condit Road for the Council to resolve the problem with the aquatics center. She felt that the issue has been resolved.

Council Member Carr stated that he was not opposed to the recommended appointment. He supported the project and moving forward with it. He wants the Council to make sure that it has looked at all of the needs and all of the opportunities within the community, including the needs of the School District with their facilities as circumstances of the School District changes. When the master plan was put together, there was a review of existing facilities and that existing school sites were catalogued. At the time, the City did not know what Sobrato services were going to be. Also, the Council did not take into account the community asset that Britton Middle School was. He said that in approximately 18 months, Britton Middle School will be at least 1/3% smaller as it is today student-wise as the ninth graders move into the high school. He indicated that the School District has made it known that they can no longer afford to maintain the pool and that they will be looking at all of their facilities as these types of moves are made. He would hate for the City to miss an opportunity in having a discussion about these issues. He did not know if this would affect the discussion of the indoor recreation center and how the City moves forward with it or moving forward with any of the City's Visioning projects. He felt that it would be worth taking a little bit of time out of the schedule to take a look at the City's master plan and how the situation that the community is in today. He felt that there may be some things that could be updated in the master plan. He indicated that the YMCA attended a City-School Liaison Committee meeting to talk about the pool because the School District had an energy report completed that shows that they cannot afford to keep the pool open much longer. The School District committed to keeping the pool open this summer as the YMCA already has its aquatics program planned for this summer. The District made it clear that they would not be able to install the upgrades that the pool needs or to pay to keep it open beyond this summer. He felt that the City may have opportunities to partner with the School District.

Council Member Tate stated that he volunteered to serve on this subcommittee because he has a strong opinion, feeling, and commitment that he made when he first ran for the Council office to both the youth and seniors of the community. He was really disappointed in the schedule. He understood that the Council made the aquatics complex the number one priority, noting that City would not be able to open the indoor recreation until the end of 2006. He requested that the subcommittee take a hard look at the schedule and that the center be opened earlier.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Ratified** the Mayor's appointment of Council Member Sellers and Mayor Pro Tempore Chang to the Council Subcommittee to work with staff and report back to Council.*

Mayor Kennedy felt that it was time that the Council stayed on track and get things done. He agreed that the schedule was too long. If the Council goes back and revisits the basis for the indoor recreation center, this would slow down the development even further. He stated that he would not want to slow down the committee to go back and revisit the matter one more time.

Council Member Carr indicated that it was not his intent to slow the process down. However, it was his belief that circumstances are different then they were when this project was first thought of, when the site was first decided, and when the Council came to the conclusion that it should be an inter generational site.

Mayor Kennedy said that if there is a way to do this in parallel and that the Council tasks the Parks and Recreation to review the master plan as the City moves forward and work on the programming. He noted that programming is the part that assesses what will be included in the center. He felt that there may be a way to do both.

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Chang, the City Council unanimously (5-0) **agreed** to extend the length of the meeting beyond the scheduled curfew.*

14. REVIEW RECOMMENDATIONS OF THE VALLEY TRANSPORTATION AUTHORITY'S (VTA) AD HOC FINANCIAL STABILITY COMMITTEE

Mayor Kennedy indicated that he has prepared written reports that will be presented to the VTA Board of Directors this Friday that address the culmination of cuts in services, increased revenues and possible new sources of revenues. He stated that he would provide the Council a packet of information that contains all of the recommendations.

Action: *No action taken.*

17. WITHDRAWAL OF APPLICATION TO CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) FOR MADRONE PARKWAY AT-GRADE CROSSING

Deputy Director of Public Works Bjorke presented the staff report and stated that it was clear to staff that the City's best chances of reconciling its differences with Union Pacific and the Public Utilities Commission would be to withdraw the City's application and restudy some of the issues that they have brought forward in the areas of traffic, impacts with the railroad, and the future increase in commuter rail traffic through the southern Santa Clara county. Staff recommends that the City withdraw the application before entering the hearing process and that staff would return to the Council with a plan on how the City might address this issue.

Mayor Kennedy said that it was clear to him that there was no way that the Public Utilities Commission or Union Pacific was going to approve the additional at grade railroad crossing as they are closing down at grade crossings.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Directed** Staff to Withdraw the Current Application to CPUC for Madrone Parkway At-Grade Rail Crossing.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City*

*Council unanimously (5-0) **Directed** Staff to Return to Council with a Plan for Addressing the Issues Raised by CPUC and Union Pacific Railroad (UPRR) Prior to Submittal of New Application.*

18. CONSIDERATION OF BECOMING A GREEN CITY

Assistant to the City Manager Eulo suggested that this item be delayed to May 7 or another date as there is nothing urgent about this item.

Action: *On a motion by Mayor Pro Tempore Chang and seconded by Council Member Carr, the City Council **Continued** this item to May 7, 2003.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Chairperson/Mayor Kennedy adjourned the meeting at 11:20 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, AGENCY SECRETARY/CITY CLERK



CITY COUNCIL STAFF REPORT

MEETING DATE: May 7, 2003

DEVELOPMENT AGREEMENT APPLICATION, DA-00-01: CHRISTEPH – KOSICH

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY: The applicant is requesting approval of a development agreement for one building allotment proposed in a two-lot subdivision on an approximate 1.75-acre parcel. The subject site is located at the southerly end of Christeph Drive, south of West Little Llagas Creek. The applicant, Mr. Kosich, was originally awarded one building allotment in the Micro Measure P competition for Fiscal Year 1999-2000. A building allotment was required for the two-lot subdivision, as a single-family home had previously been built on the site under the one unit Measure P Exemption Policy. Therefore, the second unit required a Measure P allotment.

A project development agreement is required as a formal contract between the developer and the City. The development agreement formalizes the commitments made during the Measure P process and establishes the development schedule for the project. The project specific commitments are identified in Paragraph 14 of the development agreement, and the development schedule is contained in Exhibit B.

Due to a number of issues surrounding the re-alignment of West Little Llagas Creek (a commitment made by the applicant during the Measure P process) and the slope density requirements of the hillside area, the project was awarded three separate extensions of time. The extension approvals extended the deadline to commence construction of the single unit from June 30, 2000 to June 30, 2003. As part of the development agreement, the applicant is requesting one additional year to commence construction of the single unit. The tentative parcel map has not yet been approved due to environmental delays, and the final map, improvement plans and building permit application still need to be processed. As a result, the applicant will not be able to meet the June 30 deadline. The applicant has been working diligently towards the completion of the project. In anticipation of the tentative map approval, the applicant has already prepared the final parcel map, improvement plans and building plans. Exhibit B of the development agreement incorporates a one-year extension of time, extending the deadline to commence construction from June 30, 2003 to June 30, 2004.

On April 8, 2003, the Planning Commission reviewed the applicant's request and recommended approval of the development agreement by a vote of 6-0 (with one Commissioner absent). A copy of the April 8 Commission staff report and minutes are attached for the Council's reference. Staff recommends approval of the development agreement as incorporated in the attached ordinance.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

Agenda Item # 11

Prepared By:

Associate Planner

Approved By:

CDD Director

Submitted By:

City Manager

ORDINANCE NO. 1617, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-99-04: CHRISTEPH COURT - KOSICH (APN 764-32-024)/(DA-00-01: CHRISTEPH - KOSICH)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 99-27A, adopted April 27, 1999, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-99-04: Christoph Ct - Kosich	1 allotment (Fiscal Year 1999-2000)

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 7th Day of May 2003, and was finally adopted at a regular meeting of said Council on the 21st Day of May 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1617, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st Day of May, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

**RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103**

**Recorded at the request of
and when recorded mail to:**

**City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037**

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this _____ day of _____, 2003, by and between **Dewey and Carolyn Kosich**, under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On May 21, 2003, the City Council of the City of Morgan Hill adopted Ordinance No. _____, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on June 21, 2003.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

- (a) "City" is the City of Morgan Hill.
- (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
- (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.
- (d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

- Exhibit "A" - Development Allotment Evaluation
- Exhibit "B" - Development Review and Approval Schedule
- Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On April 27, 1999, the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-99-04: Christeph Ct - Kosich, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of one single-family home as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single-Family Low and zoning classification of R-1(12,000), the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

The Tentative map and Grading Plans as approved by the City of Morgan Hill Planning Division.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans as approved by the City of Morgan Hill Planning Division.

(c) Maximum height for the proposed building is:

That height allowed in the R-1(12,000) zoning district, as outlined in Section 18.11.060 of the Morgan Hill Municipal Code.

(d) Landscaping and recreational amenities, as shown on Site, Architectural,

Landscape and Grading Plans as approved by the City of Morgan Hill Planning Division.

(e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Division.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Planning Division.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following safety features in the development:

- (i) Fire escape ladders for upper floor bedrooms
- (ii) One mounted fire extinguisher (rated 2A10BC) for each 3,000 sf of floor space
- (iii) Outdoor lighting per police department specifications
- (iv) Illuminated or self luminous address numbers for the unit and painted curb numbers where possible
- (v) Intrusion and fire alarm system monitored by a central station; intrusion alarms to provide supervision of all doors and windows
- (vi) Noncombustible siding materials on at least 50 percent of the unit
- (vii) Automatic earthquake shut-off valves for gas service

(i) Property Owner agrees to include the following open space improvements in the development:

- (i) Private open space near Llagas Creek to be maintained by property owner
- (ii) Pedestrian pathway along driveway leading from Lot 2 (existing home) to private common open space on Lot 1

(j) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.

(k) Property Owner agrees to pay the net present value of the assessment for the Mello Roos (Community Facilities) Assessment District to help fund new school facilities.

(l) In lieu of a TDC commitment, Property Owner agrees to pay an open space fee at the rate of \$15,000 per TDC. The amount of the open space fee shall be based on the average cost per dwelling unit for an equivalent TDC commitment as specified above. The open space fee shall be adjusted annually in accordance with the annual percentage increase or decrease in the median price of a single-family detached home in Santa Clara County. The base year from which the annual percentage change is determined shall be January 1, 1996. The base year may be adjusted by City Council Resolution prior to the filing deadline for each competition year.

(m) Property Owner agrees to pay double the standard housing mitigation fee computed at 10 percent of the total project, payable to the City of Morgan Hill, prior to the issuance of a building permit.

(n) Property Owner agrees to include the following **construction** features in the development:

- (i) Title 24 calculations shall demonstrate 15 percent less energy use than allowed for the unit
- (ii) Recirculating hot water system with demand pumping
- (iii) Provide built-in recycling bins in kitchen cabinetry
- (iv) Consistent level of architectural relief and detailing on all four building elevations
- (v) Class A roof covering
- (vi) Two by six stud construction for all exterior walls
- (vii) Project will run phone lines directly to a main phone box rather than looping and use RJ6 wiring for television/video and CAT5R or equivalent for telephone lines
- (viii) Project will use 30 lb. roofing paper

(o) The Property Owner agrees to provide the following **circulation** improvements:

- (i) Paved pathway along Llagas Road on First Baptist Church frontage
- (ii) Full street improvements for Llagas Creek Drive along the project frontage

(p) The Property Owner agrees to provide the following **storm drain** improvements:

- (i) Project will meet all standards for design of public facilities
- (ii) All drainage improvements shall be consistent with the City's storm drain system
- (iii) Storm drains will be constructed under public streets
- (iv) Applicant will contribute \$1,000/unit to off-site storm drain improvement fund
- (v) Applicant will contribute \$1,000/unit to the Capital Improvements Program Fund

(q) The Property Owner agrees to provide the following **park and recreation** improvements:

- (i) Applicant will pay double the park dedication in lieu fees consistent with the requirements of Chapter 17.28 of the Municipal Code
- (ii) Applicant will provide a gazebo in the private common area
- (iii) Park and recreation improvements to be completed prior to final inspection of the unit.

(r) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(s) The project shall provide the following information, by address for each unit, to the Community Development Department:

- (i) Date of sale
- (ii) The number of bedrooms
- (iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty

(30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill:	Community Development Department City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
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With a copy to:	City Clerk City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
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Property Owner: Dewey and Carolyn Kosich
16235 Camino Del Sol
Los Gatos, CA 95032-2614

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefore, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

HELENE LEICHTER, City Attorney

J. EDWARD TEWES, City Manager

Attest:

IRMA TORREZ, City Clerk

PROPERTY OWNER(S)

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MP-99-04: Christeph Ct - Kosich

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

EXHIBIT "B"

FY 1999-2000 DEVELOPMENT SCHEDULE MP-99-04: CHRISTEPH CT - KOSICH

- | | |
|---|--------------------|
| I. SUBDIVISION AND ZONING APPLICATIONS | |
| Applications Filed: | March 22, 2000 |
| II. FINAL MAP SUBMITTAL | |
| Map, Improvements Agreement and Bonds: | May 15, 2003 |
| IV. BUILDING PERMIT SUBMITTAL | |
| Submit plans to Building Division for plan check: | September 30, 2003 |
| V. BUILDING PERMITS | |
| Obtain Building Permits: | March 31, 2004 |
| Commence Construction: | June 30, 2004 |

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 1 dwelling unit and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT "C"

**LEGAL DESCRIPTION
MP-99-04: Christeph Ct – Kosich**

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

PARCEL ONE:

ALL OF PARCEL 3, as shown upon that certain Map entitled, "Parcel Map," which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on February 23, 1978, in Book 413 of Maps, at page(s) 27.

PARCEL TWO:

An easement for ingress and egress and public utilities, over a strip of land, 30.00 feet wide, the Southwesterly line of which is described as follows:

BEGINNING at a point on the Northeasterly line of Parcel One, at a Southerly corner of Parcel Two, as said Parcels are shown on said Map; thence N. 40° 13' 42" W., along said Northeasterly line and its Northwesterly prolongation, 267.93 feet to the terminus of the herein described Southwesterly line. The Northeasterly line of said easement to be extended Southeasterly so as to terminate on the general Southerly line of said Parcel Two.

Assessor's Parcel No. 764-32-024



CITY COUNCIL STAFF REPORT

MEETING DATE: May 7, 2003

DEVELOPMENT AGREEMENT DA 02-09: Dewitt - Marquez

Subdivision

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY:

The applicant is requesting approval of a development agreement for a five-lot subdivision to be constructed on a two-acre site located on the west side of Dewitt Avenue, approximately 1,000 feet south of Dunne Avenue, between Oak Park Drive and Spring Drive (APN 773-08-014) in Morgan Hill.

The project competed in the 2002 Measure P competition for building allotments. On May 14, 2002 and June 5, 2002, the Morgan Hill Planning Commission and City Council respectively approved two building allotments for Fiscal Year 2003-04 and a second-year phasing for two allotments for Fiscal Year 2004-05. The subdivision request is for five lots; however, the applicant requested only four building allotments because there is an existing habitable house on the project site that will be removed and replaced with a new house.

The applicant is requesting approval of the project Development Agreement. Development agreements are required as a formal contract between the developer and the City. The Development Agreement formalizes the commitments made during the Measure P process and establishes the development schedule for the project. The project specific commitments are identified in Paragraph 14 of the Development Agreement, and the development schedule is contained in Exhibit B.

Typically, development agreements are processed concurrently with subdivision and zoning amendment applications. These applications have been submitted; however, the applicant did not submit an application for Final Map by February 1, 2003, as required by the approved development schedule. The Final Map was not submitted by the deadline because the project's environmental assessment is currently being conducted and the Tentative Map has not been considered by the Planning Commission. The applicant has requested that the Development Agreement be approved at this time to establish a revised project development schedule. Specifically, the applicant is requesting that Exhibit B incorporate additional time for the filing of the Final Map. The applicant is requesting that the filing deadline for the Final Map be established as September 1, 2003. No changes to the other scheduled deadlines are requested.

This application was reviewed by the Planning Commission at its April 8, 2003 meeting. The Commission voted 5-1-1 recommending approval of the Development Agreement, as prepared (Commissioner Benich voted "no"; Commissioner Weston was absent). The Planning Commission staff report and minutes are attached for Council's reference.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

Agenda Item # 12

Prepared By:

Contract Planner

Approved By:

**Community
Development Director**

Submitted By:

City Manager

ORDINANCE NO. 1618, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 02-09 FOR MMP 02-02: DEWITT - MARQUEZ SUBDIVISION (APN 773-08-014)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 02-36, adopted May 14, 2002, has awarded allotments to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MMP 02-02: Dewitt - Marquez	4 single-family homes

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the Residential Development Agreement and Development Proposal approved by this ordinance (and attached hereto) are compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 7th Day of May 2003, and was finally adopted at a regular meeting of said Council on the 21st Day of May 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1618, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st Day of May, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

**RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103**

Recorded at the request of
and when recorded mail to:

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this _____ day of _____, 2003, by and between JOHN MARQUEZ, under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On May 21, 2003, the City Council of the City of Morgan Hill adopted Ordinance No. _____, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on June 21, 2003.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

(a) "City" is the City of Morgan Hill.

(b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.

(c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.

(d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

Exhibit "A" - Development Allotment Evaluation

Exhibit "B" - Development Review and Approval Schedule

Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be

transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On May 14, 2002, the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MMP-02-02: Dewitt - Marquez, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

- 1) Construction of two (2) units within fiscal year 2003-04 and two (2) units within fiscal year 2004-05, as approved by the City of Morgan Hill Planning Commission, and replacement of one existing home with one new home on the project site.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence

that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single-family Medium and zoning classification of R-1 (12000)/RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

- (a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative Map, Grading Plans and Precise Residential Development Plan as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (c) Maximum height for each proposed building is:

That height shown on the Architectural Plans as approved by the City of Morgan Hill under Site and Architectural Review Process.

- (d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (f) All architectural features and materials for all structures shall be constructed as shown on the Architectural Plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following safety features in the development:

- (i) Escape ladders shall be provided in all upper floor bedrooms.
- (ii) Each home shall be provided with two (2) mounted fire extinguishers.
- (iii) Each home shall be equipped with fire sprinklers throughout.
- (iv) The applicant shall provide outdoor lighting to meet all police department specifications.
- (v) The applicant shall install illuminated or self-luminous address numbering for each unit and painted curb numbers, where possible.
- (vi) All homes shall have an alarm system.
- (vii) All units shall have stucco and stone exteriors.
- (viii) All homes shall be equipped with fire sprinklers NFPA 13D systems.

(i) Property owner agrees to include the following Open Space features and improvements in the development:

- (i) The total building coverage shall not exceed 24.6 percent or 0.326 acres of the net site area.

(j) Property Owner agrees to include the following School features:

- (i) The applicant agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.
- (ii) The applicant shall provide handicap ramps at intersections of Alkire and De Witt Avenues and Dunne Avenue and DeWitt Avenue or any other improvement deemed worthy by the MHUSD at a cost of \$1000/unit.
- (iii) Any other improvement deemed worthy by the MHUSD at a cost of \$2000/unit making the total contributions \$3000/unit.

(k) Property Owner agrees to purchase double the transferable development credits (TDC's) subject to this development potential transfer mechanism, with each phase. Should purchase of the TDC's prove infeasible, Property Owner may, at City's option, pay an in-lieu open space fee in an amount satisfactory to the City Council. Proof of unsuccessful negotiation for the TDC's must be presented to the City with the

request of the in-lieu fee option. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.

(l) Property Owner agrees to include the following affordable housing features in the development:

- (i) The Property Owner agrees to pay 100 percent of the per unit cost of the standard housing mitigation fee payable to the City of Morgan Hill prior to the issuance of the first two building permits.

(m) Property Owner agrees to include the following construction features in the development:

- (i) The development shall include five (5) lots, three (3) floor plans and five (5) elevations.
- (ii) The project will use vinyl framed windows w/EPA “Energy Star” labels per item B2.ai. All homes will use high efficiency gas furnaces.
- (iii) All homes will have zoned high efficiency heating systems – (2) for homes o/3000 sq. ft. & dual zoning for each level @ homes less than 3000 sq. ft.
- (iv) A/C units shall be used with a “seer” rating of 12 or higher (typ. @ all homes).
- (v) All homes shall be equipped with recirculating hot water systems with demand pumping.
- (vi) All homes shall have cast iron drainage pipe. All homes to have home running phone lines from all habitable rooms directly to main phone box using RJ6 for TV/Video & CAT 5R (or equal) for telephone lines.
- (vii) All homes shall have Class “A” concrete roof tile (Class “B” min. required per code) All subfloors to be glued and screwed (nailing only is required. TJI floor joists to be used on each floor framing. (Sawn lumber is acceptable per UBC) All homes to be preplumbed for gas to dryer along with 220V outlet. All external walls to be wrapped with min. of 3/8” CDX plywd. sheathing.
- (ix) Roof lines used will be hips, gables, dutch gables and high “dormers” to create roof articulation for each elevation.
- (x) Project is next to “The Oaks” to the north and shall incorporate roof slopes and use of stone, brick and stucco from “The Oaks” and hips and gabled roofs from “The Oaks” and the custom homes to the west.
- (xi) On all homes, second story shall comprise less than 50 percent of first story footprint. Roof lines break up two-story elements on sides and rear elevations. Bay windows,

cantilevered areas and varying wall planes shall be used to create architectural relief on all four sides of homes.

(n) The Property Owner agrees to provide the following Public Facilities:

- (i) The project shall meet all standards for design of public facilities.
- (ii) The applicant shall install public facilities of sufficient size to serve the proposed development and future developments without the need to install supplemental facilities.
- (iii) The drainage concept shall be consistent with the City's Storm Drain system.
- (iv) The storm drains to be maintained by the City shall all be under pavement in Price Drive street extension.
- (v) The applicant shall pay \$1000/unit into offsite storm drain fund.
- (vi) The applicant shall contribute \$1000 per unit to the Capital Improvements Program Fund.

(o) The Property Owner agrees to provide the following Park and Recreation improvements:

- (i) The applicant shall pay triple the required park fees.

(p) The eight-inch water main in DeWitt Avenue shall be gridded to the eight-inch main in John Telfer Drive.

(q) The Property Owner shall record constructive notice for the development that the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(r) The project shall provide the following information, by address for each unit, to the Community Development Department:

- (i) Date of sale
- (ii) The number of bedrooms
- (iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraphs 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not

complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill:	Community Development Department City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
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With a copy to:	City Clerk City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
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Property Owner:	John Marquez Marrad Group P.O. Box 1767 Morgan Hill, CA 95038
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A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain,

inability to obtain labor or materials or reasonable substitutes therefor, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

HELENE LEICHTER, City Attorney

J. EDWARD TEWES, City Manager

Attest:

IRMA TORREZ, City Clerk

PROPERTY OWNER

JOHN MARQUEZ

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MMP-02-02: Dewitt - Marquez

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

EXHIBIT "B"

FY 2003-04 (2 allotments), FY 2004-05 (2 allotments)
DEVELOPMENT SCHEDULE MMP-021-02: Dewitt – Marquez Subdivision

I. SUBDIVISION AND ZONING APPLICATIONS		
Applications filed:		10-08-02
II. SITE REVIEW APPLICATION		
Application filed:		11-20-02
III. FINAL MAP SUBMITTAL		
Map, Improvements Agreement and Bonds:		09-01-03
IV. BUILDING PERMIT SUBMITTAL		
FY 2003-04 Submit plans to Building Division for plan check:		6-30-03
FY 2004-05 Submit plans to Building Division for plan check:		6-30-04
V. BUILDING PERMITS		
FY 2003-04 Obtain Building Permits:		3-31-04
FY 2004-05 Obtain Building Permits:		3-31-05
VI. COMMENCE CONSTRUCTION		
FY 2003-04 Commence Construction:		6-30-04
FY 2004-05 Commence Construction:		6-30-05

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Building Permit application six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least two (2) dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT "C"**LEGAL DESCRIPTION
MMP-02-02: Dewitt - Marquez**

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

All that certain real property situated in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

(City of Morgan Hill)

That portion of Lot 89, Catherine Dunne Ranch Map No. 3, as shown on a Map recorded in Book H, Page 65 of Maps, Records of Santa Clara County, California.

Beginning at a point in the centerline of DeWitt Avenue, distant thereon North 2° 57' West 315.412 feet from the point of intersection of the centerline of DeWitt Avenue, with the dividing line between lots 88 and 89 of the Catherine Dunne Ranch Map No. 3, as recorded in the office of the County Recorder of the County of Santa Clara in Book "H" of Maps, Page 65, Records of said County; thence running North 2° 57' West and along the centerline of said DeWitt avenue 157.706 feet; thence running at right angles South 87° 0.3' West 552.4 feet to a point on the Westerly line of that certain 9.45 acre tract of land conveyed by Angelo Capitolo and Sulina Capitolo, his wife, to R.H. Henckens by Deed dated March 21, 1931 and recorded March 27, 1931 in the office of the County Recorder of the County of Santa Clara, State of California in Liber 562 of Official Records, Page 276, Records of said County; thence running South 2° 57' East and along the Westerly line of said 9.45 acre tract of land, 157.706 feet; thence running at right angles North 87° 03' East 552.4 feet to the point of beginning.

Assessor's Parcel Number: **773-08-014**



CITY COUNCIL STAFF

MEETING DATE: May 7, 2003

**DEVELOPMENT AGREEMENT DA 03-01: Christeph -
Kamangar/Pine Brooks Trust**

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY:

The applicant is requesting approval of a development agreement for a three-lot single-family development south of Llagas Road, between Hale Avenue and Waugh Drive, at 18200 Christeph Drive in Morgan Hill.(APN 764-32-025)

The project was originally submitted for processing on January 16, 1990. The Vesting Tentative Map received Planning Commission approval with conditions on March 27, 1990. The applicant submitted a Final Map for Plan Check in late 1990, at which time Public Works requested that revisions be made to the Final Map. Since that time, the applicant has re-submitted the Final Map approximately 7 times due to neglect of stated conditions and failure to obtain the necessary Water District permits prior to Final Map approval. The City Council approved a Subdivision Improvement Agreement in March 1998, which has since expired. The last activity on this project, prior to the change of ownership in January 2003, was in May 1998.

Development agreements are required as a formal contract between the developer and the City. Normally, the Development Agreement formalizes the commitments made during the Measure P process and establishes the development schedule for a project. In this case, the Vesting Tentative Map approval pre-dated Measure P and is thus exempt from the building allotment process and the standards imposed under Measure P. Staff is recommending that the City utilize the Development Agreement as a means to impose a final extended Final Map recordation deadline. The project specific commitments and development schedule are identified in the project Development Agreement.

This application was reviewed by the Planning Commission at its April 8, 2003 meeting. The Commission voted 5-1-1 recommending approval of the Development Agreement, as prepared (Commissioner Lyle voted "no"; Commissioner Weston was absent). The Planning Commission staff report and minutes are attached for Council's reference.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

Agenda Item # 13

Prepared By:

Contract Planner

Approved By:

**Community
Development Director**

Submitted By:

ORDINANCE NO. 1619, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-03-01: CHRISTEPH - KAMANGAR/PINE BROOKS TRUST (APN 764-32-025)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 2. Measure E, the previous Residential Development Control System, under which this subdivision request was originally processed, provided for the exemption of subdivisions of four or fewer lots from the building allotment process.

SECTION 3. The Development Agreement request was considered by the Planning Commission at their regular meeting of April 8, 2003, at which time the Planning Commission recommended approval of Development Agreement application DA 03-01: Christeph Dr. - Kamangar/Pine Brooks Trust.

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the Residential Development Agreement and Development Proposal approved by this ordinance (and attached hereto) are compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 7th Day of May 2003, and was finally adopted at a regular meeting of said Council on the 21st Day of May 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1619, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st Day of May, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: May 7, 2003

REQUEST TO CO-SPONSOR A “SUPPORT OUR TROOPS” EVENT AT THE COMMUNITY & CULTURAL CENTER AMPHITHEATER

RECOMMENDED ACTIONS: Council Discussion and Direction regarding City Co-Sponsorship of the “Support Our Troops” Event

Agenda Item # 14

Prepared By:

**Council Services &
Records Manage/
City Clerk**

Submitted By:

City Manager

EXECUTIVE SUMMARY:

At the April 30, 2003 Special City Council meeting, the City Council was requested to co-sponsor a “Support Our Troops” event proposed to be held at the Community and Cultural Center Amphitheater on May 26, 2003, Memorial Day. There was general consensus of the City Council that it would be appropriate to support our troops and co-sponsor the event, however, some Council Members felt that additional information was needed. A question was raised whether this event would conflict with the Memorial Day events that normally take place and whether the amphitheater was the appropriate facility for this event. Mayor Kennedy recommended that Mr. Salstrom coordinate this event with the Memorial Day event coordinator. The City Council continued further discussion on City co-sponsorship to the May 7, 2003 Council meeting.

FISCAL IMPACT: No fiscal impact other than staffing and miscellaneous charges (approximately \$250) should the City Council agree to co-sponsor the event. If a rate payer is to use the Amphitheater, the revenue that could be anticipated would range from approximately \$750 (non profit rate) to \$1,090 (general user rate) which includes a \$500 refundable deposit fee. These estimates do not include security guard fees. These fees were based on the limited amount of information provided to staff.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 7, 2003

Agenda Item # 15

Prepared By:

**Assistant to the City
Manager**

Submitted By:

City Manager

CONSIDERATION OF BECOMING A GREEN CITY

RECOMMENDED ACTION(S):

Provide Direction to Staff

EXECUTIVE SUMMARY: The Bay Area Green Business Program is a successful partnership of agencies and utilities that assists, recognizes, and promotes businesses and government agencies that volunteer to operate in a more environmentally responsible way. To be certified "green," applicants must be in compliance with all regulations and meet program standards for conserving resources, preventing pollution and minimizing waste. It offers motivated businesses and agencies an easy-to-use framework for improving environmental performance.

The Program was developed by Bay Area local governments in collaboration with US EPA, Cal EPA Department of Toxic Substances Control and the business community. The Association of Bay Area Governments coordinates the Program, which is implemented by Green Business Coordinators in 6 participating counties. Over 270 businesses and public agencies have been certified since 1996.

The City currently participates in the County's program and is, in fact, home to the first green business in Santa Clara County, Anritsu. Two other local businesses, Eco Care Housecleaning and Educational Data Systems, are also now green businesses. The City of Palo Alto recently became the first local government to achieve green business certification. After noting their impressive achievement, Councilmember Chang asked staff to evaluate the potential for the Morgan Hill to also seek certification.

Staff has been working on "greening" City operations for several years and thinks that achieving green business status may be possible with relatively minor environmental improvements to the City's operation. The City is already buying recycled paper, has instituted energy saving technologies, and has reduced its use of water. The certification area that may be the toughest to achieve relates to the use of hazardous chemicals. Since so few of the City's operations use hazardous chemicals, it may be difficult to find enough opportunities for enhancements in this area.

Carol Berg from the County Green Business Program presented information about this program at the Council meeting on April 23.

FISCAL IMPACT: No budget adjustment is requested at this time. If staff is directed to pursue green business certification, potential cost impacts associated with the effort that cannot be accomplished with appropriated funds will be brought back to the Council before they are incurred.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 7, 2003

Agenda Item # 16

Prepared By:

**Assistant to the City
Manager**

Submitted By:

City Manager

STATE FUNDING FOR LIBRARY TRANSACTIONS

RECOMMENDED ACTION(S): Provide Direction to Staff

EXECUTIVE SUMMARY: In his proposed budget, the Governor has eliminated \$12.5 million in funding for Transaction Based Reimbursement (TBR.) Instead, he proposes that libraries charge fees on loans in order to recoup the monies previously funded by the State. The TBR is used to pay for the costs associated with interlibrary loans. The Santa Clara County Library has asked the City to oppose this reduction in funding. The purpose of this item is to provide direction to staff on whether or not the City should join the County Library in recommending a restoration of the funding.

The relatively small amount of this funding, \$12.5 million, represents a miniscule percentage of the State's budget deficit. Library supporters can argue that this amount of money offers no meaningful solution to the State's budget and comes at a very high cost to the State's residents. On the other hand, the large size of the State's budget deficit means that very painful cuts will need to be made. If the City is on record opposing too many proposed cuts, the City may appear to be out of touch with the economic realities of the situation.

FISCAL IMPACT: No budget change is requested at this time.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 7, 2003

Agenda Item # 17

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager

DOWNTOWN PLAN UPDATE: TASK FORCE FINAL REPORT

RECOMMENDED ACTION(S):

Review the Task Force Final Report and direct staff to make any necessary changes.

EXECUTIVE SUMMARY: The original Downtown Design Plan was adopted in 1980. The General Plan adopted in July 2001 included policies requiring the Downtown Plan to be updated. In November 2001, the City Council appointed a Task Force to assist staff and a consultant with the update of the Plan. Council member Sellers was appointed to serve as the Chairperson and Council member Tate was appointed as the Vice Chair. The Task Force included members from the ARB, Planning Commission, members representing downtown business and property owners, and the community at large. The Task Force met on 11 occasions over a 15-month period and recently completed its work. A Community Workshop was also held in October 2002 to receive public comment. The committee's recommendations are contained in the Task Force Final Report dated April 7, 2003.

The Downtown Plan Update will be adopted following completion of the required environmental studies and as part of the recommended general plan and zoning changes discussed in the attached memorandum. At this time, staff is requesting that the Council review the plan recommendations and direction regarding necessary changes. In particular, staff is requesting Council review of the land use strategies and the implementation priorities identified in the Task Force report. Should the Council concur with the Task Force recommendations, staff will proceed with the environmental work and the general plan and zoning amendments. The attached memorandum provides additional background and information on the Task Force recommendations. A PowerPoint presentation on the Downtown Plan is also scheduled for the May 7 Council meeting.

The Planning Commission reviewed the Task Force Report at their April 22, 2003 meeting. Commissioner supported the Plan's recommendations, but felt that more details should be provided on how the Plan will be funded and how it will be implemented. Commissioners also supported the emphasis on development of more public parking in the downtown and a parking management plan to use available parking more efficiently (minutes attached).

The Architectural Review Board reviewed the Task Force Report at their May 1, 2003 meeting. Staff has asked the Board to comment on the urban design components, including the concept plans for Monterey Road, Third Street and Depot Street. Comment on the Sign Guidelines is also requested from the Board. The ARB's comments will be presented at the May 7 Council meeting.

FISCAL IMPACT: Preparation of the Downtown Plan Update, including costs for consultant services is approximately \$179,000. The Planning Division's proposed Fiscal Year 2003-04 budget includes \$140,000 to fund the cost of the environmental studies for the Plan's adoption. This includes the cost of the traffic study to examine the feasibility of narrowing Monterey Road to two lanes through the downtown.



MEMORANDUM

To: CITY COUNCIL

Date: May 7, 2003

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: MORGAN HILL DOWNTOWN PLAN UPDATE

REQUEST

City Council review and direction regarding necessary changes to the Downtown Plan Update Task Force Final Report. The Council's comments and direction will be incorporated into the Final Report. The Downtown Plan Update will be adopted following completion of the required environmental studies and as part of the recommended general plan and zoning changes discussed in the following sections of this memorandum.

BACKGROUND

The original Downtown Plan, which was adopted in July 1980, outlined a series of actions to assist with the revitalization of the downtown area. The plan created a pedestrian oriented streetscape along Monterey Road and also included design guidelines, sign criteria, suggestions for landscaping, street furniture and a cost estimate to implement the proposed public improvements. The landscape median, special paving and other street improvements in the downtown are a result of this earlier planning effort. The original Downtown Plan also encouraged the development of new housing in the downtown, particularly as part of mixed-use developments.

The General Plan adopted in 2001 required the original Downtown Plan to be updated. The General Plan also includes a number of policies to achieve specific parking, circulation and land use objectives in the downtown. Policies specific to the downtown are listed on pages 36 and 37 of the General Plan Policy Document under Policies 13a through 13l and Action items 13.1 through 13.9 (attached).

Land Use Strategies

To implement the land use objectives of the above policies, the Downtown Plan Update includes General Plan and Zoning Amendments described in Figures 4 and 5 on page 11 of the Task Force Report. Land use classifications generally remain the same in both the original Downtown Plan and in the current Plan, with the exception of properties east of the railroad tracks and north of Main Avenue. These have been reclassified to categories more consistent with the opportunities of transit-oriented development. The various land use strategies are described on pages 12 through 16 of the Task Force

Report. Of particular note, would be the development of new higher density residential (densities up to 35 to 40 units per acre) on the Sunsweet site between East Third and East Fourth Street. Market studies prepared as part of the Downtown Plan update determined that higher density residential could be supported and would be necessary to establish a critical mass of housing that would in turn help to enhance downtown viability.

Ground Floor Restrictions

To enhance the pedestrian character of the downtown and to assist in guiding the location of businesses in support of the downtown, ground floor spaces on portions of Monterey Road and East Third Street, as defined in Figure 7 on page 15 of the Report, are recommended to be restricted to retail shops, restaurants and entertainment uses, and limited service commercial businesses. Office or residential development may be located on second floors above the retail uses.

Circulation

Policy 13k of the General Plan require that the City's road improvement programs provide efficient access to the downtown at a level of service not intended to accommodate regional pass-through traffic. The desire to reduce the amount of pass-through traffic and the speed of traffic through the downtown was also identified as part of the initial interviews with downtown merchants and other stakeholders. To address this need, the Downtown Plan proposes several traffic calming measures discussed on page 18 of the Report. The Task Force, in the Final Report recommends the City evaluate the feasibility of narrowing Monterey Road to one lane in each direction through the downtown. Implementation of traffic calming measures on Monterey Road is identified as the number one priority in the list of public improvements for the downtown (see page 63 of the Final Report).

Parking

As part of the Downtown Plan update, a parking inventory and parking utilization study was conducted. The results of this study indicate that there is sufficient parking available to serve downtown businesses and residents currently and significantly into the future. To encourage new commercial development, the Task Force recommends the City eliminate the parking requirement for commercial uses. In lieu of on-site parking for individual businesses, greater emphasis is placed on the development of new public parking facilities. Possible locations for future public parking facilities are shown in Figure 12 on page 23 of the Final Report.

Urban Design and Sign Guidelines

Planned urban design improvements are summarized on Figure 13 on page 26 of the Final Report. The Downtown Plan update includes recommended improvements to Monterey Road, Third Street and Depot Street that add to and builds on streetscape improvements that were completed as part of the original Downtown Plan. The Downtown Plan update also establishes basic design principles for new and remodeled buildings, and strict sign guidelines that emphasize the downtown's strong pedestrian orientation. The recommended sign guidelines are outlined on pages 47 through 54 of the Final Report.

Implementation Strategy

Achievement of the Downtown Morgan Hill vision will require the commitment of both public and private resources and creativity over an extended period of time. Some elements of the plan (e.g., general plan, zoning and parking codes changes) can be accomplished in the near term. The City Council can also earmark funding for a limited number of catalyst projects over the next five to ten years. However, the bulk of the implementation activities and financial investment will be carried out by the private sector and by interested groups like the Downtown Association. Private sector investment will however, be limited to a great extent until flood control improvements are completed through the downtown (see Figure 31 on page 57 of the Final Report). The implementation task and public improvement priorities are outlined on pages 56 through 64 of the Final Report.

Staff is requesting City Council review of the overall Implementation Strategy, including the land use objectives, and in particular, whether there is concurrence on the public improvement priorities outlined on pages 63 and 64 of the Final Report.

A copy of the Morgan Hill Downtown Plan Report was distributed to Council members on April 17, 2003. Please bring this document with you to Wednesday's Council meeting.



**REDEVELOPMENT AGENCY/CITY
COUNCIL STAFF REPORT**
MEETING DATE: May 7, 2003

Agenda Item # 18

Approved By:

BAHS Director

Submitted By:

Executive Director

DRAFT ECONOMIC DEVELOPMENT STRATEGY

RECOMMENDED ACTION(S): Discuss and adopt the draft Economic Development Strategy (EDS)

EXECUTIVE SUMMARY: Beginning in August 2002, the City Council/Redevelopment Agency (Council) began holding the first of several meetings/workshops to discuss the content of an Economic Development Strategy (EDS). In November 2002, the Council formed an Economic Development Committee (Committee) and requested the Committee to develop a revised EDS draft for Council consideration.

Since November, the Committee has met several times to discuss the EDS. Their goal has been to develop a Strategy which: a) reflects the Council direction, b) is concise, and c) is simple to interpret and implement. The draft EDS was presented at the City Council's April 23, 2003 meeting with direction to staff to agendize for the May 7th meeting for more in-depth discussion. Per Council's direction, we also distributed report to the Chamber of Commerce and Morgan Hill Downtown Association for comment.

Attached is the latest draft of the EDS for your consideration. The only difference between this draft and the version you received on April 23rd is the numbering format. However, the April 23rd version is significantly different than the November 20th version. The main difference is the reduction in length due to the consolidation of some goals and policies as well as the elimination of some policies and actions.

In your review of the EDS, you'll note that the last page has a section entitled "Policies to Consider." Specifically, the policy is related to minimizing impacts large retail development may have on the financial viability of similar business in town with the particular focus on downtown. The Committee did not include this policy in the EDS at this time, but would like the Council to discuss the merits of the policy and whether it or, others like it, should be included in the EDS.

We are requesting Council to adopt the draft Economic Development Strategy with revisions as approved at the meeting.

FISCAL IMPACT: None at this time



REDEVELOPMENT AGENCY

MEETING DATE: *May 7, 2003*

Agenda Item # 19

Approved By:

BAHS Director

Submitted By:

Executive Director

Morgan Hill Downtown Association's Annual Progress Report

RECOMMENDED ACTION(S): Accept the Morgan Hill Downtown Association's annual progress report for FY02-03.

EXECUTIVE SUMMARY:

For FY02-03, the Redevelopment Agency entered into an agreement with the Morgan Hill Downtown Association (MHDA) for the MHDA to re-establish the "Main Street Program" in downtown. For your reference, attached is the current scope of work for MHDA.

Per our current agreement, MHDA must make progress reports to the Agency. While staff has been an active participant on MHDA committees and Councilmember Sellers is the City's liaison to the board, we thought it was important that the MHDA present their annual progress report to the Agency for consideration.

Attached for your review is MHDA's annual progress report. It discusses their progress in meeting their annual workplan. We recommend acceptance of the report.

FISCAL IMPACT: None at this time. The Agency's current agreement with MHDA is in an amount not to exceed \$86,000.



REDEVELOPMENT AGENCY

MEETING DATE: *May 7, 2003*

FAÇADE IMPROVEMENT PROGRAM

RECOMMENDED ACTION(S):

1. Consider request for a “triple” façade grant for the Granary project on Depot Street; and
2. Discuss policy regarding the ability of businesses receiving specific assistance packages from the Agency to also participate in other business assistance programs offered by the City/Agency.

Agenda Item # 20

Approved By:

BAHS Director

Submitted By:

City Manager

EXECUTIVE SUMMARY: In February 2003, the City Council/Redevelopment Agency approved a loan of \$350,000 for Weston-Miles Architects to renovate the Isaacson Granary located on Depot Street. Weston-Miles proposed to renovate the existing Granary into 10,000 sq. ft. of commercial/office space. At the time of the loan request, staff was unaware that Weston-Miles also wanted to participate in the façade improvement program. We have since discussed their request with the Council’s Economic Development Committee (Committee). The Committee stated that the loan to Weston-Miles should be the full extent of the Agency’s participation in the project and that Weston-Miles should not be eligible for any additional assistance. Attached is a letter from Weston-Miles asking that their request be presented to the Redevelopment Agency for consideration. Their request is for a triple façade grant. It should be noted that we only discussed a request for a single façade grant with the Committee as that was our understanding at the time. Please note that a “triple” façade request would always require Agency approval. Staff only has the authority to approve single façade grants.

This request also raises a broader policy issue regarding whether a business receiving a specific assistance package from the Agency should also be allowed to participate in on-going assistance programs offered by the City/Agency. Normally, a business assistance package that goes to the Agency for consideration would identify all the Agency/City programs that the businesses wants to receive assistance from. These programs are on-going, standard assistance programs such as the small business fee deferral program or façade improvement program that can be administratively approved.

In general, an assistance package to a business is based on numerous factors such as need, benefit to the City, and type of project. To allow participation in the standard programs would provide additional assistance to the business without a corresponding benefit to the City because the business would need to perform whether they received additional funding or not. On the other hand, once the business performed their contractual obligations, shouldn’t they be allowed to participate in standard programs if they meet the program criteria. For example, once the Granary is rehabbed, if they are allowed participate in the façade program in the future, why can’t they participate now?

We are requesting direction on how to proceed with Weston-Miles and how to address such requests in the future. With regard to the policy issue, some options for the Agency to consider include:

- 1) Refer the policy issue to the ED Committee for recommendation.
- 2) Allow or do not allow businesses receiving a specific assistance package to participate in standard programs.
- 3) Establish criteria/thresholds for when a business would be allowed to do so.
- 4) Do nothing and consider on a case by case basis.

FISCAL IMPACT: A triple façade grant would cost upwards of \$53,000.